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LAW REFORM COMMITTEE

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

Melbourne – 13 December 2001

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Inspector S. Leane, Manager, Legislative Review and Proposals Unit, Victoria Police.

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

The CHAIRMAN — Good morning Commander Hornbuckle and Inspector Leane, and thank you very much for coming along today to speak further to your written submission to assist the Victorian Parliament's Law Reform Committee in its review of laws relating to entry, search and seizure.

The evidence being given today will be recorded by Hansard. You will have the opportunity of perusing and correcting the transcript as appropriate, and after you have done so we would appreciate it if you would forward it to the executive staff of the committee. Should there be any issues you would like to draw to our attention in camera that could be arranged as well, and we could move off the record. You may like to commence by speaking to your paper.

Cmdr HORNBUCKLE — Good morning, Mr Chairman and members of the committee. On behalf of our chief commissioner I would like to thank you for the opportunity for me and Inspector Leane to appear before you this morning. My name is Commander Paul Hornbuckle. I am a police commander with the portfolio responsibility for corporate policy and executive support.

I will take the opportunity to talk through the thrust of the force submission, which essentially deals with three main areas of interest for the force — that is, the role of police in the use of inspectors powers; the role of police in assisting inspectors to exercise these powers; and general advice from the Victoria Police perspective dealing with warrant powers, record keeping and the duty to keep confidentiality.

The first issue of interest, as I said, is the role of police in the use of inspectors powers. As can be seen in the force submission, the usage of inspectors powers by police is reasonably limited. This usage can be correlated with the increase in the number of inspectors in agencies such as Consumer and Business Affairs Victoria, the Victorian Casino and Gaming Authority and the Department of Natural Resources and Environment. For example, with the development of the casino and gaming authority the responsibility for the regulation of the gaming industry has effectively been transferred from police to the authority. Previously, as the committee will probably be aware, Victoria Police had a gaming and vice squad which dealt with illegal gaming, amongst other things. Other examples, such as the regulation of second-hand dealers and motor car traders, have been detailed in the force submission.

The second issue is the role of police assisting inspectors to exercise their powers. The role of police to assist inspectors is of particular concern to the force. As the role of inspectors has grown so has the range of powers open to them. Traditionally inspectors have been involved in the enforcement of regulatory offences. However, more and more the types of offences are being broadened to summary offences and some agencies have considered including indictable offences. With the broadening of offences being investigated has come more use of coercive powers, and particularly powers of search, seizure and arrest.

An action by an inspector to conduct a search and seize property or individual exhibits exposes the inspector to the possibility of confrontation. The execution of a search warrant is an action where an inspector may be particularly vulnerable to confrontation. It is in these situations that the police are often called on to assist. With the increase of these types of powers an obvious increased call is made on police resources to assist in areas that are now not core responsibilities of the force. This has inevitable budget and resource impacts on the force.

The third issue relates, as I said earlier, to general advice from a Victoria Police perspective dealing with warrant powers, record keeping and the duty to keep confidentiality. Mention is made in the force response to the need for appropriate training to be provided to inspectors as the range of powers available to them has broadened. There are limited external training courses available to inspectors. The civil investigators course conducted by the police detective training school is apparently highly sought after. However, the force has limited resources to conduct these courses and it is not, we submit, the role of Victoria Police to take on all training of these inspectors. While the force can provide advice as to the minimum standards of training that would be required of inspectors, at the end of the day this is an issue for the committee to determine or at least consider.

Finally, you will note comments made in regard to the operation of law enforcement exclusions in the Information Privacy Act. It should be noted that exemption would apply not only to police but also to inspectors when conducting law enforcement activities. In conclusion, I again thank the committee for the opportunity for me and Inspector Leane to appear before you today. If you have any particular issues or questions you want to address, we will do our best to answer them now.

The CHAIRMAN — Thank you very much, Commander. Are you aware of any areas where there have been complications as a result of the police being called in to assist the work of people who have the powers of entry, search and seizure — for example, Department of Natural Resources and Environment fisheries division

officers who have the power to investigate, arrest or apprehend abalone poachers? From your point of view, is the cooperation between government departments and the police working well?

Cmdr HORNBuckle — There is a mandatory provision within the legislation for police to assist fisheries officers in their activities. What we are saying is it creates an imposition on our resources to provide that assistance, but as far as I understand it we have not — how can I put it — been exposed to any particular problems. What we are talking about is the overall impact of our officers being taken away from what we call our core duties to assist another agency to undertake its duties.

The CHAIRMAN — Are you aware of any changes to the present law that might assist the work of the police?

Insp. LEANE — It is difficult. In recent times changes have been aimed at increasing the role of inspectors in their particular fields. As departments and agencies become more experienced and develop expertise and knowledge of their industries and develop ideas and policies on the best way to deal with problems associated with those industries — for example, the casino and gaming authority, which I believe works from this building — they also increase the range of offences that can be prosecuted, so with increased regulation comes increased enforcement.

At the end of the day from a policing perspective, as that direction shifts we offset, shift offshore or outsource activities which used to be core activities — for example, gaming. Those activities move off to other agencies which take control of them and build up their role in those industries. As they build up their role, they often build up their powers in what they do, and as they build up their powers they get to the situation where more and more they need police assistance in performing their functions. It is a circular progression in each of these agencies as they develop: as they move ahead we come back to the point where police are involved nearly as much as we were in the first place.

Coming back to the fisheries and abalone poaching example, there is no doubt — I do not think this needs to be qualified in any other way — that abalone poaching today is as close to the definition of organised crime as any crime could be. The advice that was given to me recently is that on average every six weeks our force response unit provides significant resources to fisheries officers to assist them conduct their operations in relation to arrest, search and seizure of abalone poachers. That assistance may be surveillance and it is often the execution of warrants, armed entry search and those sorts of things.

Historically, I believe the Fisheries Act was enacted in 1987, and if you compare the state of play in relation to the role of the fisheries division in 1987 with the role of fisheries now, and particularly that cell that looks at abalone poachers, and if you follow the circle, we have now shifted to the point where police are providing more resources than we would have done had we had the responsibility in 1987 for the enforcement of the Fisheries Act. Every six weeks we might provide up to 10 people as well as boats, dogs, helicopters and those sorts of things.

Cmdr HORNBuckle — And surveillance.

Insp. LEANE — Surveillance and technical support by way of listening devices and trackers on vehicles.

Mr BOWDEN — I will take up that aspect you have raised. In my electorate I have a large number of abalone fishers and so forth — it includes the Western Port and southern peninsula area, so I have a huge amount of salt water in the electorate — and it has been put to me by several people that with the increase in responsibilities as a result of the changes to the Fisheries Act and so forth, fisheries inspectors have a lot more exposure to danger and they are also required to use a lot more of the resources of the Victoria Police. Two individuals who are serving officers in the Department of Natural Resources and Environment have expressed the desire to be armed, and I have some misgivings about that.

Would you care to comment on the level of training, capability or self-sufficiency that should be aimed at for those officers of the Department of Natural Resources and Environment, given their extra duties and the extra danger they are exposed to when they intercept abalone poachers or other fishers?

Insp. LEANE — The disarming of fisheries officers has been a delicate issue for some time.

Mr BOWDEN — I know.

Insp. LEANE — Victoria Police has been reticent in some ways to have a public opinion or policy on the role of fisheries inspectors and whether or not they should be armed. The previous chief commissioner was

opposed to it on the basis of the need for operational safety at Victoria Police. As you are well aware, we have matured considerably in our response to armed offenders.

The innate difficulty with abalone poachers or fishermen or the like is that the tool of trade of an abalone poacher or diver is a knife at least 6 to 10 inches long, so there are weapons on every boat that an abalone poacher or fisher uses, which I presume would be at least a matter of concern to fisheries officers.

In relation to whether or not fisheries officers should be armed, effectively that is a policy decision for government. The view of Victoria Police would be the minimum standard or even the low-water mark rather than the high-water mark would be the training requirements that Victoria Police officers undergo, and they are considerable and expensive. Each operational officer spends at least two days every six months on operational safety tactics training in addition to the training they receive at the academy, which is substantial and which brings them up to the particular level we require. They also receive instruction in the ongoing philosophies and policies within our force.

It would be difficult for us to form a firm view on that, but from an operational perspective if we were to do joint operations with fisheries officers and they were to be armed we would expect them to have the same standards of capability and the same level of understanding of what is appropriate use of force as police officers have.

Mr BOWDEN — I am not advocating that they be armed; I am just raising the issue. Non-lethal weapons might be useful to them. A cutback in the exposure and resources of Victoria Police and an upgrade in the capability of the fisheries inspectors is my intellectual goal in this discussion.

Insp. LEANE — It is a vexed problem which it is difficult for me to give firm views on at this stage, and it needs to be thought through from a whole-of-government point of view.

Mr BOWDEN — If you have more thoughts, perhaps they could be provided.

Insp. LEANE — Certainly Victoria Police has had a view on it for some time, but we are getting into the range of the use of non-lethal force or non-lethal options and it is not my area of expertise so I would prefer not to comment. Somebody from our operational safety tactics training area might be able to give you better advice on that.

Cmdr HORNBUCKLE — If I could take that one step further, given the operational activities of inspectors and their exposure to the types of individuals Inspector Leane has referred to, any form of enhanced training regime that inspectors from the fisheries division, for example, could be exposed to would certainly be helpful in the context of non-lethal strategies and procedures.

Mr BOWDEN — Thank you.

Ms HADDEN — What about warrants? I notice from your submission that last year more than 6600 search warrant applications were made to the Magistrates Court. I know there is a procedure, including a reporting mechanism back to the court once the warrant is executed. I note from your submission that you believe that is adequate and that the police force keep voluminous records in relation to search warrants, but is there a need to have a reporting-back mechanism when a warrant is not executed so there is some monitoring by the court that issued the warrant?

Insp. LEANE — If the warrant is not executed it is returned to the court. A number of warrants have sunset periods.

Ms HADDEN — How long are they valid for?

Insp. LEANE — It would depend on the act. I think the drugs legislation has seven days, although I would have to check that. Certainly the Drugs, Poisons and Controlled Substances Act has a sunset period on the warrant and the Magistrates' Court Act has periods of sunset in relation to warrants. As part of the force's policy, if a warrant is not executed for various reasons it is returned to the court with an indenture on the rear of the warrant to indicate that the warrant was not executed. It is returned to the Magistrates Court.

Ms HADDEN — My next question is about the detective training school for civil investigators. I was impressed with your submission on that. Yesterday I was asking the witnesses how they do their in-house training. Can you tell the committee something about the civil investigators course? Is it a fee-paying course for non-Victoria Police persons, and what are the areas of training? How was the course set up? How long has it been

operating, and do the other agencies have input into what areas they want covered in the course? Does Victoria Police think it would be appropriate for all authorised officers to attend the course?

Mr LANGUILLER — In addition on the issue of training, you also talked about training overseas. Could you elaborate on that?

Insp. LEANE — I will deal with the detective aspect.

Ms HADDEN — And the fee-paying aspect, given that resources are tight.

Insp. LEANE — The fee-paying one is the simplest to answer. I understand fees are approximately \$2400 for a two-week course — that is, about \$240 a day. The history of the civil investigators course is that the detective training school has been running in Victoria Police for about 70 years — at least since the 1930s.

Operational police who wish to become detectives have to do two courses. They have to do a field investigators course, which gives them basic skills in responding in the first instance to scenes of crime, and then they attend a detective training course, which at last count lasted for about 16 weeks full time. There was so much interest about 15 years ago from civil investigators and inspectors to do the training course that some actually attended and did the full course. In about 1987 I did the detective training course, but I think it lasted 20 weeks then. It was found to be too difficult for them to cope with the whole amount of material, a lot of which was not particularly relevant to what they were doing. The depth of knowledge required to pass the course includes, for instance, the study of criminal law subjects, which are not necessarily needed by civil investigators — for example, it includes investigation of arson and offences involving homicide.

Out of the detective training school developed a shorter course lasting for only two weeks. It is probably a highlight package of what is provided in the detective training school. It takes them through basics. In the submission I have highlighted some of the areas covered. The areas deemed to be of particular importance to investigators by detective training school staff are included in the submission.

As to input from investigators and agencies in relation to content, the content is fairly well set by Victoria Police and there are feedback sessions at the completion of each course. Each course is modified from the previous one, so one operated 10 years ago would be different from the one operated now.

Ms HADDEN — Is the civil investigators course something you advertise to the various organisations such as the Department of Natural Resources and Environment?

Insp. LEANE — I am not sure of the level of marketing. From my understanding Victoria Police does not need to market it heavily because of the desire of agencies to attend. Having dealt with a number of inspectors, whether they be in gaming or fishing, I can say it is highly sought after from an agency point of view to be selected from your agency to have the opportunity to attend the detective training school civil investigators course. The third of them this year finished last week, I believe, and it depends on other requirements as to whether they are run at all and how many are run a year.

Ms HADDEN — You say it is \$2400 for the two weeks. Does that cover Victoria Police costs?

Insp. LEANE — It would be cost neutral; it is not a profit-making enterprise.

Cmdr HORNBUCKLE — A number of former members of Victoria Police and particularly staff members of our detective training school have moved to other areas. The best advertising is word of mouth. A number of these people occupy high positions in some of those organisations, and as such they can see the value in their personnel attending the course.

Ms McCALL — In your submission you observe that if the powers were given to the other people you would not be needed to go in and back them up. Am I reading that correctly?

Insp. LEANE — It depends on the level of powers. There is a watershed; it is a circular thing and comes around again. While we may divest ourselves of the responsibility to investigate certain offences and other agencies are set up to take over roles, as they develop their roles they get to a watershed point, such as in fisheries and abalone, where we end up back where we re started.

Ms McCALL — I am aware of your resource problems, therefore I am conscious that you do not want to be chasing after things if you do not really need to. Would there be a different way, for example under the Crimes

Act where it deals with arrest powers, of training up the inspectors — not necessarily arming them like Mr Bowden suggests — that would reduce your level of involvement but maintain the level of public confidence that whatever they are doing has the full force of the law behind them? It would abrogate your requirement to be there all the time to do certain levels of it and elevate their powers but it does not encroach on what you do.

Cmdr HORNBUCKLE — That is one of the main issues we focused on in our submission in terms of the training regime that is available and the level of training. We are happy to assist as we have done in the training of these people, but while I say that I am not advocating, as was mentioned in our submission, that we would take over all training.

The training issue is extremely important, particularly in the area of compliance with section 464 of the Crimes Act. In a lot of those areas some organisations have really turned their mind to confessional evidence and obtaining evidence that they feel may get through court. But if we as members of the police force attempted to go to court with that level of evidence, the case would be thrown out. It is extremely important that minimum training standards be introduced and somehow be imposed on inspectors or prospective inspectors.

Ms McCALL — I am trying to understand the level of consistency, because if there is inconsistency the public lose confidence in whatever the powers may or may not be. There is a recognition that the police have specific powers. I would rather see police exercising that on a proper warrant or dealing with an intervention order or doing police business, but at the same time the people working on behalf of fisheries, the Environment Protection Authority, the Royal Society for the Prevention of Cruelty to Animals or whoever do not misuse whatever power they have. That is the problem we are hearing about, is that right?

Cmdr HORNBUCKLE — Absolutely, and consistency of approach in our view is very important. As you may have read, our arrest, search and seizure powers are covered in our police manual and are quite voluminous. That is necessary because of the importance of absolute compliance with those requirements, particularly given the potential for civil litigation and that type of thing, which we are always exposed to. That is very high on our priorities given the risks Victoria Police is consistently exposed to.

Insp. LEANE — To add to the global issue regarding where you are going: in relation to consistency, as you flick through the list of acts — there are 70 pages listing the different acts — you will see that some inspectors have coercive powers where they can demand not only a name and address but can demand documents and details of what is in the documents. Look at gaming, fisheries in some ways, and other areas. There are some acts that have not been picked up. For example, the Victoria Racing Club has an act that contains powers of arrest so that members of the VRC committee can make an arrest for misbehaviour on the racecourse.

I was with the gaming and vice squad and I worked with the Victorian Casino and Gaming Authority investigators. We had the need, for example, to look at bingo operations. The operators of bingo centres are well aware of the role of VCGA inspectors and police have the same powers, although most police do not realise or understand that they have those powers. The operators are fine. However, where somebody is not an operator and not experienced in that industry, and then comes across an inspector who has a range of vast powers the first question is, 'Surely you do not have the power?'. The community does not understand the difference, which is where often police are called in. The public say, 'Surely this inspector does not have the right'. They think if police do not have the right to demand names and addresses, or to make them hand over documents — the trade off for police is to wear a name badge and tell them our names and where we are stationed — how on earth can civil investigators or inspectors have the powers?

Ms McCALL — We could all argue that about the taxation office. Victoria Police abide by stringent rules that the public are more aware of compared with other groups, is that right?

Insp. LEANE — There is a broad understanding of police roles, responsibilities and obligations in the community. That is not necessarily so about inspectors powers. That is where there is inconsistency in the legislation. At the end of the day, so far as police are concerned, for operational members to deal with disputes between inspectors and members of the public or to assist inspectors in the execution of their duties, if inspectors had consistent powers across all their acts, whether regulatory or not, and to a particular level, it would be simpler for police enforcement, police assistance and the general community at large.

The CHAIRMAN — Do you think, nevertheless, that the range of areas inspectors cover is capable of being reduced to the one regime?

Insp. LEANE — Maybe not the one regime, but there would need to be levels and triggers. It has been discussed in the discussion paper and in some of the questions posed. You ask whether there is a need for the mandatory answering of questions. What is the justification for and policy reasons behind that? How is that used? Is it limited to an industry? If it is limited to an industry they are some of the trigger questions that could be answered, but there may be stages of powers that are provided to investigators, and for want of a better word there may be four or five categories, with the highest category providing the ability for an investigator to demand that questions be answered. Then the community becomes aware there is at least some consistency across those areas. For example, the Legal Practice Act mentioned may be the bottom level because they deal with legal practitioners and the powers are limited compared to the powers in the gaming acts. It would have to be staged rather than be a flat level, but consistency could be achieved by staging it in that way.

Mr LANGUILLER — This area about the power to enter, seize and search is complex enough in itself, but I represent an electorate in the western suburbs where there are 90 registered nationalities, and as you would be aware, many people running businesses of all types. Sometimes I wonder how on earth they would be able to understand if they were confronted with the situation of an inspector turning up and trying to explain powers that they claim to have, but which anyone would dispute anyway. If you understood the language you would find it difficult to believe they had powers separate from the police, so how do we deal with the non-English-speaking backgrounds and lack of understanding of the powers? What rights are there for those individuals who may genuinely claim not to understand what an inspector is trying to say about an entry or seizure exercise?

Cmdr HORNBUCKLE — I suppose it all comes down to the extent to which these types of powers, when introduced, are communicated to these areas within the community. It is always a difficult situation to ensure that every member of every cultural section of the community is aware of legislation. It is difficult for basic elements of the legislation to be communicated right across the community. I agree that where we have this current inconsistency across the board and powers that do not necessarily coincide with some of the existing police powers it makes it confusing for people and difficult for those who have the power, whether they be police or other individuals, to be able to communicate directly what the powers they have mean and involve.

Insp. LEANE — If we look at the powers of the police and how the community comes to know about those powers, there are numerous publications in various languages about the powers of the police. Some are provided by Victoria Police through our multicultural unit, a lot are provided through the legal services in the western suburbs, for example. If we take a step back to talk about what are the powers of inspectors and how they relay what those powers are to members of the community with whom they interact, we would probably raise the issue of rights under section 464. Police deal in that sort of environment all the time and are able to relay rights to individuals they meet. If the police come across somebody from a non-English-speaking background there are a number of printed cards in different languages that we use. We also regularly use the telephone interpreter service or we call in an interpreter to assist us.

Mr LANGUILLER — Is that a 24-hour service?

Insp. LEANE — The telephone interpreter service is. You may have difficulty depending on the language and the dialect. They put your call through to an interpreter on call at home. It is a difficult process but in simple matters it is used often by police. You explain to the interpreter what you need to say to a person, then you put the member of the public on the phone and the interpreter explains it in their language. The phone is moved from one side to the other, but it achieves what we need to do. We can also call in an interpreter, and pay a fee, on 24-hours notice.

Through the discussion paper you vaguely raise the issue of the powers of inspectors generally. One of the threshold questions is what rights members of the public have when they deal with inspectors and what responsibilities inspectors have in relaying those rights to members of the public when they deal with them. That is not very well done in any of the acts listed in the addendum to the discussion paper. I do not think any of the acts deal well with what are the roles and responsibilities of inspectors. We, as police, know our roles and relay them to the people we deal with.

If the committee were of a mind to, it could move inspectors to the position where they had responsibilities to advise people of their rights and the limitations on their rights — where they have no right to silence, for example, which is certainly not common. Even new Australians who have been here for some time acknowledge a fundamental principle of coming to Australia is that you have a right to silence and you cannot be locked up and kept in jail for so long without the right of speaking to a lawyer and those sorts of issues. So if inspectors were having an obligation to relay to persons their rights they could deal with that in the same way the police deal with

the way they relate to members of the public what their rights are when they deal with police — be it a printed card in a number of languages, be it then access to the telephone interpreter service, or anything of that fashion.

Mr LANGUILLER — Although one should never be complacent about these things, my personal observation on the ground is that the police are doing a reasonably good job and are certainly trying harder and harder. I am not sure that I could say the same thing about inspectors to be perfectly honest. Can I take you back to the issue of training: when you do your training in what way do you incorporate these ethnic-specific areas of concern in relation to training?

Cmdr HORNBuckle — I am unaware as to the extent to which they go in focusing on the multicultural issues. I am not sure whether Inspector Leane has any further knowledge than I have.

Insp. LEANE — We have a multicultural affairs unit within Victoria Police which consists of at least three or four people that I am aware of. Some of them are sworn members from multicultural backgrounds and some are unsworn but have done a lot of work in the community and are well-known in different communities in Victoria. At each stage of initial training and other courses that unit is responsible to go out. Say it is the constables course at the police academy when we first get people in from our recruiting drives, part of their training is multicultural awareness. That is conducted by the people from that unit. They invite other people in and they learn how to deal with people from other nationalities.

That involves not just how to cope with a section 464 caution for someone who does not speak English but goes down to what is the nature of the culture of, say, the Vietnamese society. As police we have to be aware of these things, and maybe not just Vietnamese or Asian but cultures that come from police states. We have to have some understanding that when we say things to them they will be in fear because we wear a uniform and where they come from if someone comes to them who is a policeman and wants to ask them questions usually that means they are taken away and will not see their family again. Those are the sorts of cultural issues we have to deal with. Those issues are addressed progressively through different training courses that the members attend — such as the sergeants course, the inspectors courses and those sorts of issues — as well as on-the-ground training in each of the regions on an ongoing basis.

Cmdr HORNBuckle — I am sorry, I thought you were referring only to the civil investigator course in your question, but obviously you were talking more across the board.

Mr KATSAMBANIS — Coming from an electorate where we have a great diversity of people, I think the police start from a different base. I take Inspector Leane's comment about some people coming from places or nations where the police have a completely different role. But I think in broad terms the police powers might not be understood, the rights that people have might not be generally 100 per cent understood, but the role and function of our police force is a lot better understood by the general public in cross-cultural issues than the role of inspectors. So I think you start off a completely different base.

Insp. LEANE — I think that is right. That was the point I was trying to make before: members of the public do not understand what inspectors powers are, whether they be multicultural, ethnic background, Kooris or otherwise. If you are in an industry that is regulated by an inspectors — such as gaming, fishing and the like — you are well aware of what their powers are and what they can do. But if you are new to the industry or you have no idea or you are not involved in any industry at all and you come across an inspector who has powers the first thing most of the multicultural Australians do now is question, 'How do you have these powers? Police do not have these powers. How do you have these powers?'

Mr KATSAMBANIS — You are making a clear distinction between licensing regimes, where an industry is regulated and licensed in a particular way, as opposed to non-licensing regimes.

Insp. LEANE — It is probably a broad term I use, but I do not think it can be defined that way. The fishing industry is regulated by fisheries division, and gaming, be it legal or illegal, is to some extent regulated by the casino and gaming authority. Although these might not be industry specific, they might be subject specific, each agency has a role. DNRE has a broader role, not just fisheries — it has national parks, logging and those sorts of issues. So again if you are a protester in the forests you understand the role of DNRE in relation to its enforcement of timber coupes and keeping people out and so on. You understand what their role is and where you stand. If you are not involved somehow and do not have a base knowledge of what inspectors powers are you will not understand.

Ms HADDEN — Going back to warrants, I note that the Senate committee report suggests that the return of warrants to the court of issue provided some measure of accountability and helped to ensure that warrants were properly and fairly executed. The Senate report recommended that there be a consistent approach across all Australian jurisdictions. So far as you know, are the return warrants subject to any scrutiny by the court or only if an application for a judicial review is made or a report made to the Ombudsman for investigation?

Insp. LEANE — The purpose for a warrant is to search for evidence in relation to a charge. If the warrant is successful and a person is charged during the course of any trial or hearing the warrant can be subject to scrutiny by the presiding magistrate or judge. I could not give you figures on how many per cent are successful and how many are not. Perhaps I can take you back to our force instructions, which reinforce and assist or add value to what the Magistrates Court Act provisions and other provisions are. We have provided the committee with a CD-ROM copy of all our force instructions, and they are very broad.

Ms GILES — I have that in CD-ROM form. It is well over 100 pages, so I have not yet made copies for all the committee members.

Insp. LEANE — The Victoria Police is very cautious in relation to warrants for a number of reasons. Firstly, because it is an invasion of people's rights and their houses and their privileges. Operationally it is an area where we are at great risk because we go into confrontation with somebody who is not expecting us to be there, and as a result of that we have had confrontations that have gone seriously wrong over a period of time, and we have done a lot of work to ensure it does not occur any more. We also have the civil litigation problem that if we get wrong it is going to cost us money and it will come out of our operational budget. So we take the execution of warrants very seriously.

To get a warrant the process is that a member who is qualified by way of our instructions makes an application to an inspector — a member of my rank. In relation to getting it approved, first of all before a warrant can be issued there is a process they have to go through. We require a written operational order in relation to it. We require justifications in relation to what we are searching for, who is going to be in the house, what reconnaissance and surveillance we have done, what risk assessment we have done on what we are likely to find and whether it is worth executing the warrant in the first place. If it is going to be an armed confrontation where police will have to use firearms our risk assessment would say, 'That's not worth the risk. Let's find an alternative way of doing it'. They are the background issues. That is the background.

Once the warrant is authorised for an application to be made then that warrant application is made to the magistrate. An affidavit is done or evidence is taken on oath from the member taking out the warrant. The magistrate has to be satisfied on those grounds. Magistrates deal with police a great deal in relation to warrants. Although some magistrates may vary in relation to what they particularly want in warrants or applications, the watershed is fairly high — there is a very high bar to get over to get a warrant.

Mr BOWDEN — In terms of the committee's inquiry into entry, search, seizure and questioning, you mentioned civil litigation. In recent years we have seen police doing their job and civil action being taken against individual members of the police force. I do not know whether you can do it today, but I would be interested in knowing whether Victoria Police has a position on what Parliament could do, within reason, to address this issue where the police are doing their job, are behaving professionally, and on many occasions are clearly provoked yet end up on the wrong end of a civil litigation. There are times when mistakes are made, but I am talking about general harassment of police. Perhaps the Victoria Police could present a position to the committee for recommendation to the government. This is a serious matter. The vast majority of the public overwhelmingly support the police. But I suggest that perhaps if the Victoria Police has a position on this matter, it might present it to the committee for future consideration.

Cmdr HORNBuckle — I understand the chief commissioner has written to the police minister articulating our concerns about the escalation in the number of cases that have been brought forward and the extent to which moneys have been awarded against the Victoria Police. As Inspector Leane said, it comes out of our operational budget. As everyone is aware, the Tasty nightclub incident cost Victoria Police somewhere in the vicinity of between \$5 million and \$6 million, which had a major impact on our operational budget.

I believe I am correct in saying that Chief Commissioner Nixon has articulated our concerns about this very issue and has sought from the minister support in taking the matter further to somehow introduce a system to ensure this situation does not occur where our people are acting in good faith and in accordance with what they perceive to be the legislation.

Insp. LEANE — We should probably be mindful that changes to the Police Regulation Act were brought in by the current government to the effect that if a member was acting in good faith and reasonably it is a defence to any civil writ. That does not mean that the member will not be subject to a writ. Every member of the public has a right to bring civil action, at their own risk, whether or not it is successful.

Cmdr HORNBUCKLE — I will take steps to get a copy of that letter, if I can, and make that available to the committee.

The CHAIRMAN — Thank you very much. That would be helpful.

Ms HADDEN — You have the difficulty of a matter of evidence being assessed by a judicial officer as opposed to whether the damages Victoria Police currently have to pay out of its operational budget — for protecting the public and maintaining law and order — should come from general revenue.

Cmdr HORNBUCKLE — Absolutely.

Mr KATSAMBANIS — You may have covered this before I arrived, but in relation to the execution of search warrants by inspectors, do you have any anecdotal evidence — other than, I guess, the information you provide in your submission about what comes out of the detective training courses and what you hear — that suggests they may not be executed in the same way or through taking the same steps and procedures as the force will take?

Cmdr HORNBUCKLE — No, I am not aware of any anecdotal evidence. Perhaps Inspector Leane may be, but on a lot of occasions when there are problems associated with the execution of warrants by inspectors, complaints are not made to Victoria Police but to the relevant department. Perhaps that is why we do not become aware of any problems that have occurred unless we are there and have been called in to assist, but I am unaware of any specific incidents.

Insp. LEANE — In fisheries or abalone, if they are expecting a violent confrontation, whether or not fisheries officers execute warrants without calling on police, we cannot make any comment on that; we are not aware of that, or how they go when they do them. That may be a matter for each of the agencies. One of the reasons we have provided you with a complete copy of our force instructions is that they are the standards that Victoria Police set in relation to warrant procedure, execution, collection of evidence, treatment of people in houses, how we provide copies of the warrants and all those sorts of issues. Maybe they can be taken up with each of the agencies, and it may be a matter for your committee to determine whether they come up to the level of Victoria Police.

Mr KATSAMBANIS — In relation to that number of 6620 search warrant applications made in 2000, are they the force's own statistics?

Insp. LEANE — They are the force's own figures for applications to an inspector of police. I cannot supply information on whether they are successful or not.

Mr KATSAMBANIS — Thank you for providing that, because I have had great difficulty in getting any statistical information from the Magistrates Court about search warrants, which is another concern.

Insp. LEANE — That might be different from what is actually provided to the Magistrates Court.

Mr KATSAMBANIS — I understand that, but it is from your statistics, and at least you have kept statistics and they are there.

Insp. LEANE — We got the statistics because a member from our operational safety tactics training division at the police academy has done a research project in relation to warrants, so he was able to provide me with those statistics. They are for a calendar year, rather than a fiscal year, which statistics are normally run in. That is based on the research provided to me from that project. Unfortunately they do not go any deeper than what we have provided you with.

Mr LANGUILLER — With respect, you may or may not be the right people to ask about the wearing of uniforms, but some inspectors wear uniforms and others do not. I wonder whether that may make difference in terms of people's perceptions and understanding and the way they are received when they knock on people's doors. I could see the difference if one of you guys came to my door saying, 'I am an inspector'. I have heard anecdotal evidence that people have replied, 'Yes, and I'm Father Christmas!'. Do you have a view about that method, and do you have any knowledge of the what might happen in similar jurisdictions in other countries?

Cmdr HORNBUCKLE — I think the presence of a uniform certainly gives a perception of some sort of authority. Certainly the absence of a uniform would reduce, in my view, the impact of the person purporting to be an inspector with certain powers. That is my observation.

Insp. LEANE — Probably drawing out of the police experience in relation to the execution of search warrants, now in order to execute a warrant — this is in our instructions as well — police must wear a tabard which says ‘police’ in blue right across the front and back. Our bullet-proof vests, which are used for armed confrontations, have a police sign, which can be concealed or brought up depending on where you are and whether you want a target saying, ‘I’m the police’. Probably from the higher level of our experience in circumstances where people were not expecting police there has been some confusion in relation to the whether they were police or not. So that is human nature. For police to overcome that we have required that for search warrants it must be well and truly clear, and the police must wear tabards with ‘police’ on them. If you do not want to wear tabards, a fairly high level of command has to approve that you can go in without them.

Also, as part of our general training we have a forced building entry team training scheme at certain levels, which you may pick up in our instructions as well, which is a two-week course that must be undertaken if you want to do a particular level of search where some form of confrontation is anticipated or expected. As you move through the house, you are calling out, ‘Police!’, ‘Police! Get down on the ground!’. Every third word is ‘police, police, police’, to reinforce that we are the police and this is our role.

Fisheries inspectors must wear a uniform, but even if they were in plain clothes they have powers under the Fisheries Act. In every electorate I am sure in each street there would be a takeaway food shop. The fishing industry has a big black market. I am not suggesting it would be in any one of your electorates, but if you were to go into a fish and chip shop and someone walked in saying, ‘I am a fisheries officer’, without proper identification or a uniform, it may be difficult to overcome. So we can concur with your comments and with your concerns.

The CHAIRMAN — Do you have any comments about complaints data?

Cmdr HORNBUCKLE — At the end of the day the complaints that are made about the behaviour of inspectors would be likely to end up with the ombudsman. I would expect that that office would maintain records of complaints.

The CHAIRMAN — I will rephrase the question. Do you have any data regarding complaints about the use of inspectors’ powers that could be made available to the committee?

Insp. LEANE — No, we do not have specific data in relation to that issue. If an allegation of a criminal nature is made against an inspector of any variety from any agency, we do not particularly treat them any differently to any other suspect or offender.

The CHAIRMAN — Thank you. Yesterday we received evidence from the Public Transport Users Association and a submission from the consumer advocacy centre to the effect that the arrest power under the Transport Act should only be carried out by a police officer. Do you have any comments in relation to that proposal?

Insp. LEANE — The difficulty with that is that we have now — one suggestion could be that we do not have a public transport system but a privatised mass transport system, and the powers have been extended to private operators. Victoria Police expressed concerns that those powers would be extended to private operators at that time. At the end of the day, that is a policy decision for government.

I have noticed in the press that there are calls for an ombudsman of some sort for private transport operators dealing with complaints. It is the same issue I raised about the VRC legislation, where they have certain inspectors’ powers that others would not expect them to have. At the end of the day it is a policy decision for government. The Victoria Police position would be that the training would have to be at the watershed level that we have tried to suggest through our submission today and in the papers that we have provided to you. Whether or not private operators should have powers of arrest is a matter for government as a policy.

The CHAIRMAN — Thank you. Do you have any examples of circumstances where the use of inspectors’ powers have hindered police investigations?

Insp. LEANE — Probably only anecdotally. The basis of the anecdotes is that the inspectors have coercive powers, and it has come to my attention on one or two occasions during my career that inspectors come

across matters which are uncovered using their coercive powers, and then come to police saying, 'This is a major fraud we have uncovered because we have used our coercive powers'. The difficulty you have is the use of immunities that are attached to those coercive powers, and it is the fruit-from-the-poison-tree argument. Once you have used your coercive powers for a regulatory-type offence and gained documents, you cannot just then hand them over to police and expect that we can use them in a criminal prosecution with gay abandon. We are then stuck in the position where we cannot use that evidence. So occasionally and rarely we come across that, anecdotally, as a problem, where inspectors use their powers and come across issues that they did not expect to find. That could come back to training. Maybe police would not have used the powers in the first place.

The CHAIRMAN — Mention was made of section 464 and the rights of people being covered. Do you have any other suggestions about possible amendments to section 464? If so, perhaps you could take that question on notice. If there were any specific heads of analysis that might be evaluated by the committee we would be pleased to take them on board.

Cmdr HORNBUCKLE — We would be most happy to go away and provide you with a follow-up mini submission, if you like, in that regard. If you would like us to elaborate on any other particular issue in writing, which may be helpful, we are happy to do so.

Mr LANGUILLER — In a similar way I put you on notice. I do not think we should let you go away without a question about the events of 11 September and whether you think your powers are adequate and whether you have any concerns about or would be seeking any review of powers related to those events, which inevitably would have an impact right across the board. You may wish to answer that now or later.

Cmdr HORNBUCKLE — It is a good one for us to spend a bit more time turning our minds to. But I will say that powers under commonwealth legislation are also relevant in that context, from specifically the policing perspective.

Insp. LEANE — Certainly a lot of think-tank work has been done in relation to police and ASIO powers and AP roles in relation to Victoria Police getting through the minefield of both the commonwealth and state privacy acts in relation to us releasing information that we hold. Obviously when times are booming and things are going well, civil rights are high on the agenda for everybody. When there is a serious crisis in the world, there is a retraction of people's views on how far civil rights should go.

It is a very broad area. Some legislation has been introduced into Parliament, as you would be well aware, in relation to anthrax hoaxes, and we were certainly involved in relation to that. We have some views about other effective measures that may be taken. But it is a very broad question, and it would be difficult for us to give a short answer or even — —

Mr LANGUILLER — Could you refer, particularly, for example, to the relationship and cooperation between the forces and jurisdictions?

Ms McCALL — Yes, I think that is the issue. The issues are not what your powers may be but the misunderstanding of what other people's are.

Insp. LEANE — In relation to federal authorities coming in?

Ms McCALL — No, inspectors and whatever. I mean, in light of the fact that everybody is a little bit more suspicious, more aware or more acutely conscious. It is not what your powers are; it is the misinterpretation of what theirs might be.

Insp. LEANE — Sorry, I still do not get the point.

Ms McCALL — It is reversing the argument. You may want increased powers, certainly, but it is then that the public may have a perception that everybody else has — —

Insp. LEANE — I see.

Ms McCALL — An inspector fronts up from some other jurisdiction on their doorstep and, quite rightly, is suspicious of something they may or may not find. What is their level of responsibility, referring it back through to the police? See what I am saying?

Insp. LEANE — I see what you are saying, but — —

Ms McCALL — It is convoluted.

Insp. LEANE — It is very convoluted. I would have to think about that for some time.

Ms HADDEN — I will ask you two questions on notice. Our terms of reference specifically relate to the complaints data in relation to the use of inspectors powers. Do you or Victoria Police have a complaints data system in relation to when you are called out to assist inspectors or authorised officers?

Insp. LEANE — Probably no, is a simple answer.

Ms HADDEN — The next question, which is also on notice, is how often inspectors request police assistance when executing search warrants, and do you keep a register or record of that?

Cmdr HORNBUCKLE — Whether we do or whether we could? Is the question whether we could or would or do?

Ms HADDEN — Yes, and whether it would assist you in formulating your budget, I suppose.

Insp. LEANE — That is a big question that we now have to look at in relation to our role with DNRE. We will not be able to give you a whole-of-inspectors-powers answer, but maybe we can pick selective areas. Where we have high involvement we may be able to detail to you what that involvement is.

Ms HADDEN — Thank you.

Mr KATSAMBANIS — Perhaps you could build on what is in the submission.

The CHAIRMAN — The final question relates to training. It was mentioned that that is an area the police are keen to become actively involved in, taking into account budget contingencies. If you had the budget, would you be happy to continue on with it, or would it be best if the training aspect was conducted by another agency and police were brought in to lecture as part of a component of that training?

Cmdr HORNBUCKLE — That would be our preferred option in my view, without having the opportunity to give it some further thought. I think that would be the more practical approach. We would be happy to participate in such a training regime, but we would particularly like to see that training regime reflect the high standards applied by Victoria Police in the way it approaches its duties.

The CHAIRMAN — Yes. Thank you very much, commander and inspector, for your time today. All the best.

Cmdr HORNBUCKLE — Thank you very much. We will address those additional issues in the shortest time frame possible.

The CHAIRMAN — Thank you.

Witnesses withdrew.