

PROOF VERSION ONLY

LAW REFORM COMMITTEE

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

Melbourne– 21 February 2002

Members

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Witnesses

Mr P. Phillip Hatton, Director; and

Mr R. Lear, Contracts Manager, Trade Measurement Victoria;

Mr B. Kearney, Director, Liquor Licensing Victoria; and

Mr P. Eager, Senior Sergeant, Victoria Police.

Necessary corrections to be notified to executive officer of committee

The CHAIRMAN — Good afternoon. I welcome you to our hearing this afternoon. Thank you very much for taking the time to prepare your submission. The material presented this afternoon will be recorded. It will subsequently be forwarded to the parliamentary staff of the committee who will peruse it. Please peruse it and amend it as appropriate and it will be placed on our website as part of the evidence given during the course of this inquiry. We have a number of questions we would like to ask of you in broad terms. However, I understand you have a presentation that you would like to take us through.

Mr HATTON — I am the Director, Trade Measurement Victoria. I thought I would take this opportunity to work through very quickly, obviously, the submission we made to you. It was easy to do this by just going through in very quick point form on a Powerpoint and I thought it would be easier for both of us. So I have this prepared.

By way of background, I want to fill the committee in or advise them that you are probably aware that all developed countries have established a system of trade measurement which underpins consumer and business confidence, and I think that is a fairly obvious statement but it happens to be true.

In Australia there are goods and services provided under the trade measurement system, this is right throughout Australia of around about \$300 billion. That figure is a little bit difficult to obtain, but it is around about that figure. I actually got a figure of about 5 or 6 years ago which was a little bit less than that and I have made allowance for inflation.

Within Victoria the value of goods and services provided or looked after under our legislation, being the Victorian trade measurement legislation is around about \$75 billion or thereabouts worth of goods and services.

Historically, each state and territory within Australia had its own piece of legislation, its own act controlling trade measurement. In fact not only did they have their own act, but each act bore very little commonality with the Trade Measurement legislation of its neighbour, being the neighbouring state or territory.

This probably was okay for a certain amount of time when there was not a lot of trade between states and territories, and certainly there was not significant international trade. But around about 1980 or 1985 this was certainly recognised to the degree that the commonwealth and states started working on uniform trade measurement legislation which would be adopted by all states and territories and therefore give a common approach from an Australia-wide situation.

In 1990 the commonwealth and all states and territories except Western Australia agreed to put in model uniform legislation and to pass it in their various parliaments. So this legislation was agreed, as I mentioned, by all states and territories except Western Australia. They did not sign the agreement because there were some aspects of the model legislation which they didn't agree with, but I might say they have now agreed to pass the model legislation. I understand that they propose to do that this year.

The model legislation was introduced to create a uniformity amongst the states recognising that trade has no state and does not recognise state and territory boundaries. Certainly it is necessary to have a piece of legislation which is the same in Victoria as it is indeed in New South Wales and Queensland. There were also other reasons for introducing the uniform legislation. That was to promote commercial certainty in interstate and international trade. Obviously imports coming into this country, it is extremely difficult to do business with Victoria if it had different legislation to New South Wales as it may to Queensland. It has to be uniform. Certainly as a result of doing that there are significant reductions in business costs, having to comply with one piece of legislation only. Obviously it goes on to increase efficiency to business if you do that, and certainly you can improve, and we have, consumer confidence. Certainly we have similar and common protection provisions now right throughout Australia, so they were some of the benefits as a result of going to uniform trade measurement legislation which Victoria has.

The other thing is that this current legislation promotes a degree of self-regulation within the business community with respect to trade measurement, and certainly as a result of doing that there is a far less interventionist role for government.

Uniform legislation covers a number of areas, but as I mentioned, it covers all goods and services which are sold in some way by measurement and without going through each of those in detail, the one that perhaps I can highlight is pre-packed articles, an area which is just exploding at the moment. It is actually increasing at an exponential rate, packed goods that are produced within Victoria and Australia, but certainly also that are being imported.

We agreed to adopt this model legislation, as I mentioned before, in 1990 we signed an agreement. The then Labor

government signed an agreement to proceed with model legislation. In 1996 the then Liberal government decided to adopt that uniform piece of legislation and it comes in a package of legislation. First of all there is the principal act, which is the Trade Measurement Act 1995. That is supported by the administration act, which actually enables us to work through that act and to make the provisions work.

Trade Measurement Victoria at that time came into being. Prior to Trade Measurement Victoria the work was done by councils and a department within the state government. It is now all controlled under the state government under the Department of State and Regional Development, which has just recently changed in name.

Victoria has 15 inspectors or authorised officers as we call them. They are responsible for administering the legislation in their respective regions. These people are located and live within their own region, and Victoria is divided up into 14 regions. One region has two inspectors.

The inspector's role includes a number of areas which I will not go into but more particularly the one I have highlighted and read is investigating complaints and resolving problems. If I may move on again to investigate and resolve problems and also to ensure that the provisions of the legislation are being adhered to, there are a number of powers that they rely on, and these are the powers that I guess we are talking about today.

The trade measurement powers come in two forms. They come in under the principal act which is the uniform model. This is the model which has been adopted right throughout Australia, and these are general powers. They are powers of entry, of search or seizure and to question. I would have to say these are the backbone powers in terms of an inspector being able to ensure that the provisions of the act are in fact catered for and are observed. These powers are supported in the Trade Measurement Administration Act where the supporting powers have the ability to have a search warrant to assist the power, the general power of entry, search and seizure. So one is reliant on the other. Without the supporting power in the administration act in terms of being able to obtain a warrant the general powers would largely be without teeth.

I would have to say that the warrant provisions, which are in the administration act have never been used within Trade Measurement Victoria. However, we certainly find them as a very powerful deterrent in assisting us in our investigations. In other words, we haven't had to use those warrants, we more particularly have had a number of times to refer to them and by referring to them we certainly have been able to achieve the sort of work and investigation that we have needed to undertake, but certainly without having to go and actually obtain that warrant. I would have to say that is not necessarily going to happen in the future. There are some areas which perhaps may very well need us to move into and obtain a warrant. We have found to enforce the provisions of the legislation the inspectors, we actually train them to be skilled negotiators. Part of that negotiation is preferring that we do have warrants if we have to. But certainly we would much rather a situation to obtain entry and if necessary seizure of goods by way of negotiation rather than by way of using these powers outright.

As I mentioned before, the skill of negotiation is often only possible by way of being supported by these powers and these warrants and the possible provision of the warrant. We haven't in the six and a half years that Trade Measurement Victoria has been in existence, received one complaint in terms of excessive use of these powers, and as I said, we certainly put a lot of attention into the negotiating skills of these inspectors.

The CHAIRMAN — Have there been many prosecutions during that timeframe?

Mr HATTON — There have been a number, and I will pass on to Ron Lear and he can tell you how many. Certainly what we tend to do in Trade Measurement Victoria is actually treat businesses as good corporate citizens to start off with. So if we find a business is not necessarily adhering to the provisions of the legislation our first requirement is to talk to them and if necessary, give them a warning letter. We would then follow that up with training and advice and assistance where we can, because we normally find that that's all it takes.

If the breach continues, we may very well give them another warning letter or even advice, depending upon the severity of the breach. We then often move to infringement notices, of which we have a number that we can exercise. That may very well end up a number of infringement notices, and these are penalties up to \$500. It is only after that that we would move into exercising provisions through the courts. So while we have not necessarily had to exercise at all times the provisions of those powers, we sort of have a scale that we move up to and we normally find as we move up through the scale that we are able to satisfy our requirement and bring that particular company back into order.

Mr LEAR — My role is contracts manager, which includes the management of the inspection services. In regard to your question on the number of prosecutions, in the period that we have operated I believe we have had in

the order of five or six.

Mr HATTON — I was going to say, if we can just go back, in terms of Trade Measurement Victoria, we have certain complaints against the powers of the inspector. We have a formal system within Trade Measurement Victoria where we go through a procedure. For instance, the inspector does not have any discretionary authority to exercise those powers in his own right. If in fact he needs to exercise those powers, he first has to make application to Ron Lear, the contracts manager. After he has fully satisfied himself that they are necessary, he will speak to me, and as director of Trade Measurement Victoria, I will give approval to exercise those powers. So there is a procedure that the inspector needs to go through before those powers are exercised and they do require ultimately my authority to do so. So in that way there is a very tight control over what we regard are powers that are necessary but certainly powers that should only be used in a very careful way.

In summary, if I could just run through a few points. One is that we believe these powers that we have are powers that actually support the self regulation of industry, which is the main focus of the legislation. As I said before, most companies are good corporate citizens and they don't need other than sometimes a warning letter or an advice to do something correctly if they are doing it incorrectly. There are some companies that unfortunately need further — will actually need us to take further action. It is these companies that we need those powers to not just control but to ensure that they meet the requirements of the legislation, because without that it does endanger the legislation, which as I mentioned before, is very much focused towards self-regulation, and companies doing the right thing by the legislation. We need to support those companies which are doing the right thing by being able to take action against those that would prefer not to.

These powers have been agreed nationally, and they have the agreement of all states and territories, not just ourselves. As a result of having this national agreement, the powers of the inspector are actually consistent right throughout Australia other than for Western Australia, which is about to bring in the legislation.

I mentioned to you before, I believe these powers are not used indiscriminately at all. There is a mechanism to ensure that they are only used as a result of adhering to a procedure, and ultimately I have got to give my approval for them to proceed. There is some difficulty if the committee in their wisdom decide these powers need to be altered. For them to be altered they require the unanimous agreement of all states and territories and the commonwealth. I have legally hit my head up against the wall trying to get much more simple changes to this legislation than changes to these powers, but that is not to say that if the committee in its wisdom decides that these powers should be changed, I certainly will attempt to do so through the national agenda.

Oddly enough, I just put that in. There have been some amendments to the national model legislation, but of recent times they have actually been to strengthen these powers rather than to weaken them. I did say that it is unlikely that other states and territory governments would agree to a weakening of these powers, but irrespective of that, as I mentioned, if it is agreed that they are going to in some way be altered, certainly you have my full weight in terms of assisting in that regard, but they would need to be equipped like all the other states and territories. I am open to any discussion.

The CHAIRMAN — Thank you very much. Are there any general questions that anyone would like to put to Mr Hatton before we move to some specific questions?

Mr LANGUILLER — Thank you for coming and your very comprehensive presentation. We appreciate that. You referred to views incorporating additional protection into the legislation and in particular to authorised officers. May I put to you the following: Are the following procedures already followed, and if not, what are your views on the appropriateness of implementing them, for example, cost factors and enshrining them in the legislation? I refer you to formal complaint mechanisms, complaints about conduct of inspectors, to video searches, tape— recording of questioning, to wearing of uniforms, itemised the materials seized, and providing owner occupiers with a list, procedure for dealing with disputed seizures, consent forms for entry to private dwellings and formal reporting process on the use of inspectors' powers.

Mr HATTON — If the committee would allow me, I would like to hand that over to Ron Lear because he handles and looks after the trade measurement inspectors directly and certainly instructs them on many of those areas you have put.

Mr LEAR — Thank you. Can we work through them one at a time?

Mr LANGUILLER — Sure. Formal complaints mechanism.

Mr LEAR — We do have a formal complaints mechanism where the complaints are recorded. They are then sent on to inspectors who have a responsibility within a period of 48 hours initially to get back to the complainant. Following that they then have up to 30 days to investigate and report back on that complaint and finalise the complaint with the complainant.

Mr LANGUILLER — Videotaping of searches, tape-recording of questioning?

Mr LEAR — There is no videotaping of searches. There is tape-recording of questioning.

Mr LANGUILLER — Wearing of uniforms?

Mr LEAR — They don't have a uniform. Several of them have themselves devised their own type of uniform, but there is no formal uniform.

Mr HATTON — There is certainly identification which they are required to carry at all times and in fact if they are approaching people, to advise who they are and show their identification.

Mr LANGUILLER — Itemising material seized and providing owner-occupiers with a list?

Mr LEAR — Seizure notices require to be issued with any seizure and that is itemising as far as what is seized.

Mr LANGUILLER — Procedure for dealing with disputed seizures?

Mr LEAR — I think you've got us on that one because we haven't had to have such a procedure. I guess it is probably one area that we haven't dealt with.

Mr LANGUILLER — Consent forms for entry to private dwellings?

Mr LEAR — Under the act the entry to private dwellings can only be achieved by the consent of the owner or alternatively by a warrant, and we have not had a requirement to call on a warrant, so we have not had any difficulty with that.

Mr LANGUILLER — Formal reporting process on the use of inspectors' powers?

Mr LEAR — I am not quite sure what you mean in reporting process. Could you elaborate a little bit?

The CHAIRMAN — Perhaps it may relate to the obligation of there being a summation or report of the activities of inspectors at the end of a financial period as to the volume of investigations, the number of complaints, et cetera.

Mr LEAR — Right. Each inspector is required to record all visits. We actually have a computer-linkage. Each of them has to feed the information into Trade Measurement Victoria, so they do record all visits that they have made and details of instruments that they may well have seen at that particular premise. As far as details of the actual advice and whatever may have transpired, we don't have a record of that.

Ms GILES — Given that you do a lot of these things as part of your internal practice, would you in principle have any objection to putting any of these things in the legislation? I understand you have agreement with the national agreement, but given some of these things are done anyway, would you in principle object to them being inserted into the legislation as suggested in our discussion paper?

Mr LEAR — I guess what you are referring to is a reporting mechanism of what basically happened on each of those visits, I take it?

Ms GILES — I am not necessarily making a comment about the level of detail, but some sort of formalised reporting system, some sort of complaints mechanism so that it is a bit more transparent in the legislation, for example. I am interested in your views on that.

Mr HATTON — That would not be as hard as it first appears because that would probably be in the administration act. The administration act is separate from the uniform model act, and it is only the uniform model act which in fact we can't change without unanimous agreement. And I think I know what you are meaning or what you are saying, which is for the sake of transparency to say these things will be done, it doesn't have to talk in terms of what sort of detail, but it would be shown up as sort of the general activities of what an inspector would

be required to do. Certainly I would have no objection to that. It would be the level of detail we need to talk about because clearly there is work involved if it is more detail than what we could consider necessary. But for the sake of transparency and having this is the normal activity, yes, I have no objection to that.

Mr KATSAMBANIS — What procedure do you have for return of seized goods?

Mr LEAR — The situation is that under the act the owner may claim the goods back within 6 months of them being seized, and I think we have only had one instance wherein fact goods have been seized back, and this was actually a scale. The difficulty is that many of the goods that are required to be seized are usually perishable goods and having held them for a short while they are not of any value because they are past the use-by date, so we don't have a requirement on usually returning those because they are of no value to anyone.

Mr KATSAMBANIS — So you don't have any protocol whereby you can effect a prosecution without needing to hold on to the evidence so that you can enable the perishable goods to be dealt with?

Mr LEAR — Generally speaking, where perishable goods are involved there is usually a labelling problem, there could be a weight problem with an underweight situation. Usually the evidence is in photographs rather than the actual article itself in having photographic evidence of the weight of the articles and even to the point where the particular owner of the articles signs off to say that he witnessed the weighing of them and that was what they weighed so there are ways around not having to hold those articles. In fact we would hold very few of those. It is only in certain cases where we believe it is necessary to hold that evidence.

Mr KATSAMBANIS — Along that line: In your examinations do you come across prohibited goods, and if you do, what are the protocols for you liaising with other agencies in order for you to deal with those issues?

Mr LEAR — Generally I don't know whether our inspectors would necessarily know what prohibited goods were. They are very conversant in their own acts but they are not extremely conversant with a lot of the other acts.

Mr KATSAMBANIS — What would happen? Is there a protocol if your inspectors walked into a premises and suspected that the substance in the corner was cocaine or heroin or some other illicit drug?

Mr LEAR — We have never had that incident occur, so I can't tell you. But they are very observant and there has certainly been a number of cases where they have seen an occupational health and safety issue which is not right and we will forward it on to the appropriate department to follow it up.

Mr KATSAMBANIS — Is there a protocol for that?

Mr LEAR — No formal one; it is informal.

Mr STENSHOLT — Section 9 of the Trade Measurement Administration Act, the powers of the director, I want to ask you a little bit about that one, but first of all in terms of inspectors, how many inspectors have you got, I guess that relates to the powers of the director, because you have a range of inspectors or agents, et cetera?

Mr HATTON — We have 15 inspectors and we have 14 regions. One region has two inspectors, it is a husband-and-wife situation, they are both inspectors — what fun!

Mr STENSHOLT — Under the powers of director section, you enter into an arrangement or agreement with any person or body to supply services; have you used that one?

Mr HATTON — No, I haven't. I have only entered into an arrangement with those inspectors and they are signed off by the Minister.

Mr STENSHOLT — Nor do you have any agents or any authorised officers for the purposes of issuing infringements.

Mr HATTON — None, other than the inspectors.

Mr STENSHOLT — The issue of training and I guess selection of the inspectors, obviously metrology is a specialised subject so presumably they have some kind of training program they have to go through.

Mr HATTON — Our inspectors have either had previous experience as trade measurement

inspectors, or there used to be a TAFE course that they could do and they receive a qualification as a result of that. That is basically their qualifications. In terms of training, outside that basic qualification they certainly receive a lot of informal training and that is they are brought into Melbourne into our head office once a month. Certainly problems are discussed there. The aim is to get uniformity throughout Victoria. We certainly don't want the inspector, let's say down at Traralgon doing something completely different to the same sort of individual as another inspector somewhere else in Victoria, so the aim is to get a commonality of approach, and certainly in terms of their interpretation of the legislation.

There has been some training with respect to negotiating skills training, a or 3-day course. Certainly when they have to appear in court there is training on court procedures, so they receive in addition to that basic qualifications training on a fairly regular basis, particularly aimed at aspects of their work which we believe would be useful in them being able to undertake the work better.

Mr STENSHOLT — Thank you. Just briefly, because you've talked about this before: The national uniform trade measurement legislation, it really is sort of section by section. Is it the same right across the board?

Mr HATTON — Yes, it is. When Victoria agreed to adopt the model legislation, it agreed to adopt it section by section. It is different in so far as it is a different numbering section and to be honest I don't know how that came about. The provisions in the agreement are the same.

Mr STENSHOLT — So you have got, for example, an exception in regard to self-incrimination in this act, and obviously it is in every state act as well.

Mr HATTON — Yes.

Mr STENSHOLT — Whereas in other legislation you don't have that, so you are advising us not to get too clever.

Mr HATTON — No. What I guess I am saying is that I have attempted on a number of occasions to change the model legislation, and it has been on items like the sale of meat or the sale of alcohol. There are some parts of the legislation which I just believe are out of date, but it has been with some difficulty. I have been singularly unsuccessful to date in terms of changing those provisions.

Mr STENSHOLT — I was interested in terms of this that in one act it talked about a warrant only to be used for residential purposes, whereas in the administration act it just talked about a warrant but there was no mention of residential purposes. Do you have any comment on that?

Mr LEAR — I don't think I have a comment.

Mr STENSHOLT — Residential premises, I meant.

Mr HATTON — If you would wish, I am quite happy to come back with a comment, I will do some research into that, but I honestly can't answer that at this point in time.

Ms HADDEN — If you find a problem of bringing the national uniform legislation up to date across the board, is there some system in place where you meet annually, either your department or ministers nationally?

Mr HATTON — We actually meet twice yearly, and the majority of that meeting normally talks in terms of interpretation of the act or in areas where we need to change it to bring it up to date. It is a very slow process. There are a number of amendments that we have all agreed after 3 years, I would think, in terms of discussing these amendments, that finally will be agreed. They are currently being drafted in Queensland at the moment. But the more contentious items — and I don't know how the sale of meat could be contentious — it is very difficult to even get those changed. I have been unsuccessful in terms of getting those ones. It is difficult. Unfortunately you have different states who take a more conservative view, may I say, with respect to some of these provisions which I would regard as out of date. It is very hard to get changes.

Not only do we meet twice a year, it needs to be agreed by SCOCA's officers and then finally I think it needs to be agreed at a MCCA (MCCA – Ministerial Council on Consumer Affairs) meeting of ministers and it has to have unanimous agreement of all ministers in all states, and that's what makes a difference.

Mr BOWDEN — To clarify a point that I would appreciate: Does not department in its negotiation with the other jurisdictions go into such things as how much meat is in a meat pie and what constitutes a sausage, those

sorts of things, or is it just weights and measures?

Mr HATTON — It does not look at how much meat is in a meat pie. We would be more interested to make sure that if you were buying a packet of meat pies and there had had to be six meat pies there were six pies in it. How much meat is in a meat pie we would not see that as ours, nor the sausage either, other than if you were getting some sausages and you wanted a kilo of sausages and you got something less than a kilo, then we would be certainly interested.

The CHAIRMAN — Phillip and Ron, many thanks for your effort. Would a copy of the Powerpoint presentation be available?

Mr HATTON — Certainly.

Mr KATSAMBANIS — The joint submission from Liquor Licensing Victoria and Victoria Police covers a lot of the areas that we are concerned with. I will just try to cover the areas not in the submission or that need clarification. Do you have any formal complaints mechanism. In respect of your inspectors be they liquor inspectors or police officers.

Mr KEARNEY — In terms of the liquor enforcement laws in Victoria, Liquor Licensing Victoria, which is the administrative unit controlling it, has not appointed any inspectors or authorised officers to give effect to the powers that the director has under the act. There is total reliance on the Victorian police to enforce the various provisions of the act. Therefore, in terms of that question you asked, we would rely on the Victoria Police processes.

Mr KATSAMBANIS — Right. Ordinarily the police don't video tape their searches. Would that be correct?

Mr EAGER — That is correct, yes.

Mr KATSAMBANIS — Have there been instances where they have video taped these types of liquor licensing searches?

Mr EAGER — Not that I am aware of.

Mr KATSAMBANIS — In terms of normal videotaping, you follow normal police procedure?

Mr EAGER — That is correct.

Mr KATSAMBANIS — Obviously your officers are uniformed or not?

Mr EAGER — If I can explain that: the liquor-licensing unit really is a section of the prosecutions division which is located conjointly with Liquor Licensing Victoria. We interface between Liquor Licensing Victoria and the district licensing inspectors, so all operational matters in relation to policing are done at a local level by police under the control and administration of the local licensing inspector at a local level. We don't have any interaction with licensees as such.

Mr KEARNEY — It is important to bear in mind that the licensing inspector is an officer of rank of inspector or above in the Victoria Police, they are not an administrative inspector.

Mr KATSAMBANIS — I note interestingly that your inspectors have powers to enter as of right, if you like, without any authority licensed premises, yet where they suspect there is unlicensed dealings, they require a warrant; is that the case?

Mr EAGER — An authorised member as distinct from an inspector, the statutory position of an inspector — an authorised member who is a sergeant or above or a senior constable in charge of a one-man police station or a person with authority in writing — has got the power, as you say, to enter licensed premises. For other premises to gain entry, yes, it has to be by virtue of warrant.

Mr KATSAMBANIS — Do you find that adequate?

Mr EAGER — I think that is reasonable, yes.

Mr KATSAMBANIS — Moving on to some of the issues specific to the legislation, what I have

noticed is that it seems to be that police officers have on occasions used a quasi detention power that isn't spelt out in the legislation, and some time it has been in conjunction with other officers when they enter licensed premises to check numbers, so that for instance there is a nightclub or some other licensed premises and through inspection powers they enter to check the numbers on the premises, they are authorised to have over 100 people. You simply block the place off and count off the people. What legislative head does that come under, what power is that done under?

Mr EAGER — There is no provision in the act as I understand it. It is an operational matter which really I am probably not the person to speak to about that issue, so I can't take a view on that. It is an operational matter which I am not really in a position to comment upon, but in so far as what power there is contained in the act to do that, there is no power. If a person said, 'Look, I want to go,' of course, there would be no power to say, 'Well, look, I would prefer you to remain'. I am not sure in practice how that is implemented. That is probably my difficulty, as to whether they do in fact say, 'All right, everybody has to stay here'. It is not my understanding of how it is done.

Mr KATSAMBANIS — I have witnessed one such instance.

Mr KEARNEY — If I could offer an historical perspective on that: Certainly back in the early 1990s when there were a significant number of nightclub incidents and issues of overcrowding were of concern, that was a reasonably standard practice. My recollection is following the famous Tasty Nightclub case there was some modification to police practice in this regard. Now overcrowding in the nightclub environment is not currently an issue on the agenda because of the changing mix of licensed businesses such as the small supper clubs tending to takeover from the bigger nightclubs, so the issue of overcrowding, I don't think has actually emerged in the most recent times. As Phil said there has been a modification of the operational procedures since the Tasty Nightclub issues.

Mr KATSAMBANIS — In the act there doesn't seem to be a section dealing with the privilege against self-incrimination. Is that an issue? Is there any reason there is no privilege against self— incrimination spelt out in the statute? Ordinarily in a procedural matter, what would happen where a licensee just simply invokes the privilege against self-incrimination?

Mr KEARNEY — I can't speak authoritatively on why such provisions aren't in the act. The current act is the Liquor Control Reform Act 1998. I cannot recollect such provisions in earlier liquor legislation. If one was to invoke one's rights in this regard, I presume the police would make their prosecution decisions and proceed. Prosecutions under liquor law can be heard in the Magistrates Court or if they involve some matters related to seeking suspension, cancellation of a licence, they are dealt with at the Victorian Civil and Administrative Tribunal so I presume if someone wished to exercise such rights they would argue the matter.

Mr KATSAMBANIS — I think the act is unique in that it gives seizure powers to licensees rather than to inspectors or police or anything like that, very limited, but nevertheless they are there. What training does your department or any other body give to licensees in order for them to administer these seizure powers?

Mr KEARNEY — I should commence my response to that by providing some sort of rationalisation of why that is so. There are presently over 12 000 licensed businesses in Victoria, and the incidents that occur in real time and it would be most rare if a police officer was in attendance when for example a false ID was produced that was required to be seized, et cetera, so the act does provide specific although limited powers for licensees and their staff to do so.

In terms of training that is provided, Liquor Licensing Victoria provides a range of training programs to licensees which details to them what their responsibilities are and how they should be both prudently and effectively implemented, and that is an issue which is raised with them. The degree of reasonableness and respect that they should apply to the people who they are dealing with is stressed.

Mr KATSAMBANIS — Just looking at the provisions of division 3, section 126 specifically, it doesn't talk about — provision — it doesn't talk about giving documentary evidence. What it does talk about is providing particulars and requiring satisfactory evidence so that the production of a document is not actually directly covered in the wording. Do you find that that is an issue? Is there a matter of clarity or lack of clarity there?

Mr KEARNEY — Maybe by way of introduction before Phil formally responds, section 126 is a provision which flows on from previous liquor law over many years, and in fact was introduced into the legislation when the current evidence-of-age regime was not in existence. Prior to 1995 when an evidence-of-age regime was

introduced which was driver's licence, proof of age, keypass card or passport, there was no minimum standards required so the practice was the police or other authorised person would require someone to attest in writing of their age.

Mr EAGER — Following in practice as Brian is alluding to, section 127 is where we are talking about evidence-of-age documents, I think that really is what happens in practice rather than the somewhat dated provisions now as far as when they are talking in general terms of particulars, nonspecific particulars, and I think also 126 talks about having a statement that a person completes and signs, and I think we have moved on a little bit.

Mr KATSAMBANIS — Thank you for moving on to that because I was going to point out the absurdity of the wording of one provision and the following one seems to deal with a completely different regime and you've both covered it. I know you are to administer the act, and to enforce it, as the case may be; but I guess what I am getting at is: Can't we word this so it reflects modern-day reality?

Mr KEARNEY — I suspect in a future iteration of the act section 126 may well disappear.

Mr KATSAMBANIS — Are there any other issues relating to the powers that either LLV or the police have at the moment or don't have as the case may be?

Mr KEARNEY — I think the point needs to be made that whilst the act provides that the director of liquor licensing may authorise a public servant or servants to undertake inspectorial powers, in fact that does not occur. No officers of Liquor Licensing Victoria has such a delegation from the director. The Victoria Police have — we rely totally on the Victoria Police to enforce the Liquor Control Act. The Commissioner for State Revenue has been authorised by the Director of liquor licensing as provided by the act to allow persons subsequently authorised by him to investigate certain taxation matters related to certain sales of different types of liquor.

Ms McCALL — Certainly down in Frankston we have a liquor accord and a very close relationship with the liquor-licensing policeman who was David Pike — we lost the former one, we miss him terribly. The question is in relation to the training of the licensees. How obligatory is it that the licensees undertake that training in order to comply with the Liquor Reform Act?

Mr KEARNEY — The legislation does not prescribe compulsory training. However, Liquor Licensing Victoria does offer a range of training programs. The responsible serving of alcohol workshop, that is a program that in the last 10 years has been undertaken by over 120 000 licensees, bar staff and hospitality students. We also have a regional program which is called liquor licensing in regional Victoria, which is taken around to all major cities. It is a day seminar where every licensee in particular areas is invited to come along. But there is no compulsory training except in the context of what we call high— risk licensed premises. A high— risk licensed premises is one which trades beyond 1 a.m. and provides live entertainment. There would be a condition of that licence that everybody who serves alcohol must have done a responsible serving of liquor licensing course — the same with the Big Day Out rave parties.

Successive governments have chosen not to make the training compulsory. As director of liquor licensing and responsible for the Liquor Licensing Act 1990 I have argued that training should not be compulsory because I can see no point in training going in one ear and out the other if there is no motivation on the part of the person to increase their knowledge. Secondly, I am of the view that if training is compulsory there will be no motivation on the part of the training agency, being Liquor Licensing Victoria, to continue to ensure the training is relevant and genuinely value adds to the business. I say that in the context of certain premises by their nature, there must be training, and that is the high— risk, but as a general issue the legislation does not demand it and whilst I would have the power under the act to require it in every case, I choose not to.

The CHAIRMAN — Brian and Phillip, thank very much for coming along to speak to the committee this afternoon.

The witnesses withdrew.