

PROOF VERSION ONLY

LAW REFORM COMMITTEE

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

Melbourne – 21 February 2002

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Witnesses

Mr B. Power, Insurance and Legal Counsel;

Mr P. McKee, Revenue Protection Officer Manager; and

Ms K. De Clercq, Public Relations Spokesperson; Yarra Trams.

Necessary corrections to be notified to executive officer of committee

The CHAIRMAN — Good afternoon. I would like to invite my colleagues to introduce themselves. You will receive a transcript of the evidence taken today. You will have the opportunity to proof it and return it to our staff. We have had a number of submissions in relation to public transport matters and we are very grateful for you having come along this afternoon to speak to us. We had Paul Chadwick, the Privacy Commissioner in Victoria, speak to us before lunch where he enumerated a number of examples of the powers of inspectors versus the rights of individuals and the two are juxtaposed. I invite you to speak generally on what you would like to draw to our attention and then we have a number of specific questions we can ask of you.

Mr POWER — I am the legal officer at Yarra Trams. You have our submissions so you could ask us the questions.

The CHAIRMAN — Thank you. In terms of enforcement philosophy, how would you describe Yarra Trams approach to law enforcement, and is the Transport Act generally enforced strictly? There was an example during the December blitz on fare evasion, or do inspectors use a degree of discretion?

Mr McKEON — I am the Revenue Protection Office Manager. We have a very straightforward strategy with respect to fare evasion. Any offences committed under the Transport Act are reported. The staff have very minimal discretion, and that is with respect to a clear aspect with offences that are committed. If there is no clear evidential reason for reporting them, then they use their discretion there; but if there is a clear fact that offences have been committed then they will report them.

Ms McCALL — Can you be specific? At what stage would they exercise that discretion?

Mr McKEON — Yes. For instance, if they get on a tram and ask a person to produce a ticket, and the person says, 'Look, I am in the middle of purchasing one or I have only just got on with you now', then black and white there is an offence being committed because they don't have a ticket, but there is a discretionary reason because they have not had a opportunity to buy the ticket. Because the protection revenue officer can't be factual about that they use their discretion in that effect.

Ms McCALL — They might say fine.

Mr McKEON — Yes, it is called directing the purchase. They have been assisted in purchasing that ticket.

The CHAIRMAN — Allied to that, are you concerned about any fines that may be appealed or subsequently overridden?

Mr McKEON — No, not at all. I have pushed with my staff right from the very start that the penalty is not a problem for us. It is the enforcement of the Transport Act, and whatever penalty or appeal or withdrawal comes after that is not our worry. It is the enforcement at the start that is our concern. Convictions in court aren't a matter of us, it is just a matter of giving the evidence that is required and the outcome is beyond our control. As long as we are ensuring that we have the facts there and the full evidence there to at least get a conviction if we need to take it to court.

Mr KATSAMBANIS — Just on this, we received evidence late last year from the PTC as to the process that they undertake once your reporting mechanism gets to them. So we have a fair idea of how they view the world. But as far as you are concerned, once you take details of a particular alleged offence against the Transport Act, you pass those details on.

Mr McKEON — That is right.

Mr KATSAMBANIS — What sort of records do you keep of that transgression?

Mr McKEON — We have a data business which assists us in that reporting process. Our staff take notes in a notebook on the tram. They will come back and then give a photocopy of the notebooks to a staff member who then inputs that into a database and prints out a computer-generated form with all the details of that report. That is then filled in with further reasons for the offence and the reasons that the offender gives for the offence taking place. He then signs that and sends it off to the Department of Infrastructure. We have that database with the details there. If we are given information that the report is not going any further or I decide not to send that matter in, then those reports are withdrawn from that database.

Mr KATSAMBANIS — Right.

Mr McKEON — Initially, the only records we keep are reports that have gone through for reporting.

Mr KATSAMBANIS — Is there some sort of tracking mechanism so that you know where that report that you put in ends up; you know Joe Bloggs paid their \$50 fine or Joe Bloggs was convicted or fined in a Magistrates Court?

Mr McKEON — We haven't got a standard format for that. As you can understand, we report up to 1200–1300 people a month and it is very hard to get reports back to us with respect to all reports. More serious incidents with respect to assaults, resist arrests, things like that, obviously we do statements for and staff attend court for those matters so we do have accounts of what happens there because we have staff attending court, so we get feedback from those, but normal single offences where we have an infringement notice issued we don't necessarily get any reports back.

Mr KATSAMBANIS — Do you have any ability to share your information with the other franchisees?

Mr McKEON — With respect to reports?

Mr KATSAMBANIS — Yes, generally, with respect to offences.

Mr McKEON — With respect to offences generally, we talk to other companies. We have a meeting with the prosecutions department every month and we talk about issues and problems that arise generically throughout the system. But we certainly don't pass on information to them with respect to who we report or what we have done in that respect.

Mr KATSAMBANIS — So you have no capacity to find out that Joe Bloggs who you found without a ticket today has been caught by 2 of the other franchisees 5 times in the past 2 months without a ticket.

Mr McKEON — The Department of Infrastructure does, but not us, no.

The CHAIRMAN — What is the response of Yarra Trams to the suggestion that there may be a differential level of enforcement according to the profile of the passenger? Evidence has been given that there may be more focus on younger non-ticket carrying passengers as opposed to adult passengers or other people. Has that been a matter you have been required to address in the past?

Mr McKEON — I can give you a graph of people we have reported over the past 12 months. Of the 14 000 reports or 12 500 reports we have submitted our highest age bracket is between 24 and 29 years of age. The breakdown is 2 096 between the ages of 20 and 24 have been reported in the last 12 months. Between 15 and 19 years of age it is 1 600 then it goes to the 25 to 29-year-old age bracket is 1 400. Then the 30 to 34-year-old age bracket is 814, and it goes down from there. 10 to 14-year-old persons we have spoken to is 113 in the last 12 months.

Ms De CLERCQ — Can I add that that reflects the breakdown of our passengers' age groups also.

Mr STENSHOLT — Can I follow that up? We obviously get people coming in our offices and asking questions, particularly can they get off the fine, et cetera? But it seems that the school kids feel as if they are unfairly targeted and they are easy meat for the officers because they are a bit negligent in carrying all the associated documents. What do your figures show in terms of not carrying concession cards?

Mr McKEON — In the 10 to 14-year-old age bracket, as I said, we spoke to 113 in the last 12 months and that 10 per month out of the 1200-odd each month that we report generally. But we have found that yes, kids don't carry their concession entitlements with them, but overall they do, as an overall check they do carry their concessions and their tickets with them. We have a warning program in place where if we have a child who has got a yearly pass or a yearly ticket and they haven't got their concession entitlement we get them to produce that entitlement within 7 days and the matter goes no further so we have a warning in place for those types of situations.

Mr STENSHOLT — You don't have any in-house policy?

Mr McKEON — It is not an in-house policy so much but it is just a customer service way of dealing with it because these children are entitled to concession, so they should be afforded the ability to get that concession. The biggest problem we have is between the 14 and 15-year-old age bracket, because at 14 they don't need the

concession entitlement. But when they hit 15, a lot of the kids don't realise that they need that entitlement, so they are given the flexibility to obtain that entitlement, so you find that is why the 14 to 15-year-old age bracket you get very few reports.

Mr POWER — There is no policy to target school children or children in general for that matter. That hasn't been the case.

Mr KATSAMBANIS — Everything you've said now, you've given all the details as far as your passenger breakdown is concerned and your fare evasion breakdown is concerned and the age levels match up, but I have got to say anecdotally, in my office and it is borne out by the other members here, as well as advocacy groups, the evidence suggests the contrary: There appears to be a perception, that your ticket inspectors have in the past targeted senior school-aged children and young adults, and that comes through consistently in my office on a daily basis.

Mr McKEON — I think the problem is the perception there. If an adult is being spoken to by revenue protection officers, then they have been spoken to. But there is an automatic protection for children and for young people and people take more notice of what is happening when young people are being spoken to. I think that is the issue we have to deal with, that it stands out more and there is that perception that yes, we are picking on the kids, but that is not in actual fact the problem. It is human nature and I don't think we can get around that, unfortunately.

Mr POWER — We have seen some figures which suggest, I think, that maybe half of ticket-related offenders are under the age of 18. But as we said, those figures don't accord with us, so just in relation to the complaints that you get, are they Yarra Trams specific or in relation to revenue protection across the board of the transport operators?

Mr KATSAMBANIS — Given where I am, it is almost exclusively Yarra Trams.

Mr STENSHOLT — Same with me.

Mr POWER — People can come to us, and if they have got a complaint we have a complaints mechanism in place, and we haven't received a large number of complaints, particularly from parents in relation to any offences that their children may have been penalised for. We haven't really come across that, but if that is the experience you are having, we would be happy to look at that. As I said, the complaints mechanism that we have in place also doesn't indicate that there is a disproportionate number of children who are being penalised.

Ms HADDEN — Both the Consumer Law Centre and the Public Transport Users Association advocate a couple of reforms, but the first reform both organisations advocate is for the appointment of an independent public transport ombudsman to handle complaints against transport inspectors; and secondly, that only police officers be able to exercise the arrest and detention powers pursuant to 219 and 219AA respectively. What is your response to both of those recommendations?

Mr POWER — We don't have a problem with an industry ombudsman being appointed. I know that it has been prefaced before, but we haven't had any real discussions with the government, so we are not opposed to the idea of that occurring. With respect to the powers of arrest, we would oppose that on the basis that the number of actual arrests that are affected by our office is fairly minimal. Paul will be able to give you some figures in relation to that. However, what the fear is, is people will soon realise that the officers won't have the power to actually arrest them in the event that they don't give their name and address and the flow-on from that is that fare evasion will increase.

Mr McKEON — I have the statistics with respect to where we have had to arrest offenders for resisting arrest or detention. Over the last 12 months we have actually charged 42 people with resisting arrest out of the 12 800— odd people, so that is less than 0.5 of a per cent, so it is a very minor issue for people who are generally reported.

The CHAIRMAN — Is it an issue that has ever arisen where there are not inspectors on board but the driver of the tram may be expected to intervene in a circumstance, or do drivers ever exercise the power of arrest?

Mr McKEON — They have intervened with behavioural-type instances — fights, things like that, but I can't recall any area where offenders have been arrested under 458 arrest powers by drivers, no. There has been that interaction between the person and the driver to get him off the tram or to quell a problem, but that is about as far as it has gone.

Mr KATSAMBANIS — Do you drivers get any training on that?

Mr McKEON — They get customer service training and they get training with respect to dealing with conflict. To what point, I don't know. But they certainly don't get training with respect to arrest powers because they haven't been given that specific power.

The CHAIRMAN — I had a constituent a while back who saw a couple of younger people graffiti-ing a train. A 65— year— old lady intervened and exercised her power, not quoting section 458, but marched them off to the ticket office and was surprised to find out that the ticket sellers weren't interested in apprehending the young people any further as they felt they didn't have the power and it was an occupational health and safety issue.

Mr POWER — They wouldn't be authorised officers under the Transport Act so they wouldn't have the power of arrest, so that is probably why they didn't intervene if they were just selling tickets.

The CHAIRMAN — She was a bit nonplussed to see them walk off into the horizon.

Mr McKEON — Frustrating.

Mr KATSAMBANIS — On that, you have a situation where the media has portrayed fare evasion as an endemic problem. In Melbourne, I am certainly talking about representatives of your company and other franchisees, they agree with that; you also have a continuing issue of other behavioural issues including graffiti and other forms of vandalism and destruction of property and also threats to person. What legislative or other powers that you don't currently have do you think you could reasonably have to ensure better outcomes?

Mr McKEON — I think we have got an issue; it is a clouded issue, with respect to verifications. We have a clear right to ask for names and addresses in the Transport Act, and as I have mentioned, nine times out of 10 the people will happily do that and we will ask them for verification of those details and again they will happily do that. We do have a percentage of people who will say you are not police and you have no powers and they refuse to give us details. The issue comes in then with the detention and the verification of details. If we had clear guidelines under the Transport Act to say that you must supply a name and address and must verify those details by way of production of identification, we would have a lot less of a problem because it is clear cut in that respect.

Mr STENSHOLT — But the 43 that you arrested, was that for ticket evasion?

Mr McKEON — You would find a high percentage of that would be.

Mr STENSHOLT — And was it on the basis they didn't verify their details or just outrightly refused? It seems odd to be arrested for not paying a fare. It seems to be out of proportion.

Mr McKEON — This is a problem we have where people say why have you had a struggle, why have you had an arrest and fight over a simple little ticket? It goes further than that because sometimes they will give us their name and address thinking that that is all we can do, and as soon as we ask for proof of those details they turn around and think I have given a false name, how do I get out of this one, because we have taken it that step further. So you will find that 9 times out of 10 if a resist arrest has occurred, or a refusal to verify those details, then those details will be false.

Mr STENSHOLT — Under the act you are unable to verify them. If someone gives you their name and address and you actually demand verification, in many ways you are actually provoking them and then you take the next step to arrest them for refusing to verify those details.

Mr McKEON — We are telling them we have their name and address and to assist us we need verification of those details. They are not obliged to supply those details but if they are unable to verify those details then we have to call the police in to assist us in the verification.

Mr STENSHOLT — That is not in the act. You are going beyond the powers in the act in doing that.

Mr McKEON — If we ask them to state their name and address, we have to ensure that the details we are obtaining are correct. If they are refusing or if they don't want to cooperate with respect to verification, then it opens up the reasonable grounds to believe that maybe those details are not correct.

Ms McCALL — You say in line with verification. Not everybody carries — maybe they don't have a driver's licence, maybe someone hasn't got the latest gas bill in their handbag; what do you mean by refusing to

give verification?

Mr McKEON — Some people will refuse. They say, 'No, I have given you a name and address. I am not telling you anything more'. Some people say, 'I haven't got anything on me that I can produce'.

Ms McCALL — So can you give me 5 days and I will produce it?

Mr McKEON — We say is there anyone we can contact by phone who can verify who you are by way of an employee, an employer, by way of a relative or friend.

Ms McCALL — If you are stopped by the police and you haven't got your driver's licence on, for example, you have 5 days to appear at the nearest police station to produce it. You don't give them that leeway.

Mr McKEON — We are unable to do because as soon as we accept that they are going to give them a couple of days notice, if they have given us a false name and address we have no chase-up. Police have the option of registration numbers and it is a bit easier for them. Plus they have a common acceptance that they have a right to get that information and we are fighting against that.

Mr STENSHOLT — When it comes to the court for these arrests and the fact that you've provoked them to be arrested by the fact that you have no right to demand, how do they stand up in court?

Mr McKEON — We have what is called CAPS under the Transport Act, and as part of the arrest powers it is an abbreviation for the continuation of an offence that is happening, the appearance of that person in court, the preservation of peace and the safety of others.

Mr STENSHOLT — You have provoked the disruption to the peace by asking for verification.

Mr McKEON — Not necessarily. We have been given a name and address and to ensure that person's identity in court and the correct identity we have to give confirmation those details are correct. If they refuse to assist us in confirming those details, that opens it up to having reasonable grounds.

Mr KATSAMBANIS — Could you remind me in which section it is an offence to give a false name and address?

Mr McKEON — It is, a false name or address.

Ms HADDEN — Section 418B.

Ms MASON — The 43 that you mentioned there who were arrested for resisting arrest, but how many were actually arrested? Presumably there were some that were arrested and didn't resist.

Mr McKEON — It is hard to decipher between arrest and detention. If we detain someone to verify those details, technically they are under arrest. We may detain of that 1200 effectively 500 of those people, but it is purely by saying we need verification of these details, 'Would you mind staying with us until we get that verification?'. By that time they are happy doing that, but technically it is a detention but it doesn't seem that way at the time.

When people are arrested specifically it is when they have resisted, when they have tried to run off from us and they have been physically detained. They are automatically told they are under arrest for refusing to give us a name and address or for whatever reason and the detention then takes place from there. Normally the people who are charged with resisting are the ones who continue to struggle after they have been told they have been arrested, and it has been made clear to them what the situation is.

Mr STENSHOLT — Do you have any analysis or is it possible to get some analysis of the terms of those arrested whereby the main cause is because they have refused to verify their name and address?

Mr McKEON — Just bear with me a moment of the roughly 13 000, 570 passengers have been charged with failing to give a correct name and address. Now that covers both the ones who have refused where we may have had a resist but it also covers the ones who have given a name and address and when we have asked them to verify those details they think, I have done the wrong thing, and they come up with the correct details. A lot of people have a misunderstanding that we just get the name and address and they just give us anything initially and that is why it is important for us to verify it, because that is what happens, they turn around and think — —

Mr KATSAMBANIS — Your people would ordinarily come across transgressions that they don't have any non-citizen powers to deal with. In the course of their duties they may come across people who may be dealing in drugs or all sorts of other offences, be they petty or major; what are the protocols in those situations?

Mr McKEON — The Transport Act in respect to that is very wide because it doesn't matter what offence you commit — on the tram, for instance — a lot of the time it falls under behavioural offences? Under the Transport Act we have provisions to cover behavioural offences, and they are offences that can be offensive or dangerous to other passengers therefore we have that same power to deal with that so we have the right to ask for a name and address again and if they refuse, we have the arrest power from there.

For instance, we had a lady come up to our staff a couple of days ago saying that a person who was on the side of the road had stolen her bag on the tram the week before and she recognised him, so our staff got out there and kept an eye on him but that's as far as it went. They didn't take it any further because they had no real power to do that, so we assist where we can, but if it is on the system, we have specific powers

Mr KATSAMBANIS — What do you do if you detect an assault, for instance? Do you arrest the person and then contact the police, or detain the person?

Mr McKEON — Not necessarily arrest straight off. If we can stop the incident from taking place, obtain names and addresses, then we pass them on to the police. If we can't confirm who they are, yes, we will detain them and hand them over to the police. It just comes down to an identification issue.

The CHAIRMAN — One final question in relation to verification, if I understood some evidence we received before lunch, there is some suggested doubt about the precise power, under which you can seek verification of details. There is a direct power to ask for a name and address.

Mr McKEON — Yes.

The CHAIRMAN — To seek production of a document or something else that might establish identification as a matter of certainty. It may not have a direct legislative head.

Mr McKEON — No. It has been made fairly clear to us we can ask for a name and address, but when it comes to verification we have a request that they produce something that they can prove by way of a licence or something. We can't demand that they produce it and then detain them if they don't. It boils down to —

The CHAIRMAN — Is that a subtlety in the law that needs to be clarified then?

Mr McKEON — I believe very much so. We need a specific power to have people prove who they are. We are criticised — and I won't say criticised a lot — but we have been criticised in the past with respect to ages. Any charge that comes up in the Magistrates Court or in a court of law, the first point of proof is identity. If you don't have identity then you can't take it anywhere, so we have an issue with respect to dates of birth. We ask every passenger for a date of birth, but if they refuse to give it to us, we have no power to take it any further, so we have to go by our own judgment and assess how old they are and hope we don't get into trouble with it.

Ms McCALL — That could get you into all sorts of problems.

Mr McKEON — The biggest issue is with children and adults, if we misjudge the age and send a child to a magistrates court or an adult to the Children's Court, that is a problem with respect to dates of birth.

Mr LANGUILLER — You can ask under the act for date of birth?

Mr McKEON — Name and address only, but not date of birth. We do ask as a matter of courtesy but if they refuse we are unable to take that any further. Another way of getting that is obviously the production of a driver's licence which has the date of birth on there.

Mr STENSHOLT — Do you ask for it; do you record the date of birth?

Mr McKEON — Yes. Normally 99 per cent of the time it is given to us, but it depends on the cooperation of the person.

Mr STENSHOLT — But if you get the driver's licence you just note it down anyway?

Mr McKEON — Yes.

Mr STENSHOLT — How are you going to deal with that with the new privacy provisions?

Mr McKEON — As I said, it goes with identification with respect to proving who the person is. The example I have used with my staff, if I have got two passengers on the tram both named John Smith, which is not uncommon, I have got a battle to take them to court because I can't prove identity. That is an issue we really need to change in the Transport Act.

Mr KATSAMBANIS — That is the bottom line, you need some legislative certainty.

Mr McKEON — Yes.

Mr LANGUILLER — Do you think that the public is sufficiently or adequately aware of your powers?

Mr McKEON — No.

Mr LANGUILLER — Are there any particular sections of the community that you believe are more insufficiently and inadequately aware of them?

Mr McKEON — The public is aware of its expectations on the system, and that's obvious when our staff get on to a tram. We have people pouncing for the machines, we have people pouncing for the door or to validate; they know they have to have a ticket. But when it comes to being detained or being arrested, a lot of people are very surprised because they believe police are the only ones with those powers. We have had discussions recently with respect to marketing campaigns and advertising that the issues that we have here, because I think if the public were more aware of what rights we have under the Transport Act, then it would be a lot smoother ride.

Ms De CLERCQ — During our fare evasion campaign in December, we advertised the rights of the revenue protection officers or the authorised officers so that people would have that information directly in front of them. There are also brochures available on the system that describe the powers of the authorised officers and Yarra Trams had its own brochure that described that very clearly and also referred to the specific parts of the Transport Act.

One of the problems that we encounter from a public relations perspective is that when we try to get those messages out in the media, it is generally reported in a sensationalist manner so that, say, during the December fare evasion blitz the public was in some instances almost encouraged to challenge the powers of the authorised officers, which is a situation when an incident would arise. So rather than promote the powers of the authorised officers and inform people in a sensible manner about what they are entitled to do, the media tend to act against us, and that is where a lot of people get their information from.

Mr McKEON — Probably a good area with respect to that is the hinderers, we have one person who has been arrested who is struggling and we might have 3 or 4 people who see what is happening and try to get involved in it and because of their lack of understanding about what is happening they get in there and side with the person who has been arrested and all of a sudden you have 4 or 5 people involved then they contact the media and give a blown out story about what has happened — we have been thrown to the ground, et cetera — and it is just blown out of proportion. Again, those people don't understand the fact that they are committing an offence as well under the Transport Act with respect to hindering.

Mr POWER — Just to take that a little bit further, the authority officers, sometimes people have actual problems in identifying who they are, and we have suggested and would like if there was a common badge that could be carried by all the carriers which could be used to identify themselves and perhaps try to raise public awareness in relation to that particular badge, which indicates who that person is and what powers they have which go along with their authorisation, so that is something that the franchisers have looked at and have requested and we have consulted the government in relation to that.

Mr KATSAMBANIS — Boyd, with respect, I mean we are not dealing with 47 000 milk bars, we are dealing with three or four franchisees.

Mr POWER — Yes.

Mr KATSAMBANIS — Why can't you implement that? Why do you need legislative protection for

that?

Mr POWER — Because there are issues in relation to misidentification; do they look too much like a police badge and things like that, so we do actually need permission of the Department of Infrastructure. We could carry badges, but again we would prefer it if all the authorised officers had the same types of identification and we would hope that that may reduce the level of — ‘Big deal!’ — I am not really sure how to put it.

The CHAIRMAN — If I could interrupt there and suggest you could send through a five-paragraph letter to Kristin on that, that would be helpful in our legislative work.

Mr POWER — We have detailed it in our submission but we can take it further.

Mr McKEON — We have been pushing for a badge across all companies for 18 months. They have finally come up with a design that they are trialling at the moment. The critical thing is we want the same badge across all companies with the crown. It was important to have the crown as part of that badge because it shows strength and government support, whereas if we had gone on our own to make our own badge up, we would not have been allowed to use the crown and we may have ended up with four different badges which destroys our credibility again.

Ms McCALL — The problem with that is that you are not Crown employees which would be a significant difference in using the crown on a public document.

The CHAIRMAN — If we could focus on that information being part of any further submission, as we are running out of time.

Mr KATSAMBANIS — The brave new world of the Information Privacy Act, what impact has that had on your operations and what steps have you taken to make sure that you comply with the new regime introduced under the new Information Privacy Act?

Mr POWER — There is now documentation that is provided to people whose details are taken by revenue protection officers. We have also changed the way in which we were storing information. We will only hold details now for a reasonable period of time and we have deemed that to be up to a year just in case there may be any potential appeals or anything like that, but we will need to retrieve the information.

In relation to the information generally anyway, all the information is stored on a database and it is password protected; there is no sharing of that information, it is not given to anybody outside YarraTrams. In fact there is only 2 to 3 people within the revenue protection department who actually have access to anybody’s details anyway, so we have been — we were compliant with the laws even before they came in anyway in relation to most of those issues.

Mr LANGUILLER — I wonder if you can make any comments in relation to before and after conductors and whether — when I hear that you have to spend so much in terms of budget and energy and so on and all these issues that anecdotally to me appear to be very significant, particularly after conductors were removed.

Ms De CLERCQ — In terms of tackling the fare evasion problem, there are no accurate or detailed figures on fare evasion to compare after privatisation with before privatisation. We have figures now, but there are none before. Anecdotally if you speak to tram drivers who were previously conductors or other members of staff who were previously conductors, fare evasion was a real issue, even before they disappeared, because in the different ways that people perform their job and with what level of professionalism.

Mr McKEON — It is probably important to note, too, that the revenue protection staff have always been in place. Even with conductors we had revenue protection officers dealing with fare evasion before, so it is not something new that has come into place since the conductors have left. There is just a bigger emphasis on it, that’s all.

Ms HADDEN — My question is how you deal with third-party information. For example, a young person needs to verify his or her identification to the authorised officer, and is asked or has no other identification on them so you ask for the name of the parent or guardian and the phone number. I mean that is not covered in the Transport Act. How do you deal with the collection of that personal information of a third person who is not involved in the process and certainly hasn’t committed an offence?

Mr McKEON — With respect to verifications, if we ask someone for a family member or friend to

verify who they are, we will contact that person. We now have in place directions with respect to permission: 'Can we have your name and address, or can we have your name to verify this person,' and if they say, 'No, I don't want the name taken,' we take it no further. Their verification is on the person doing the phone call. If they are satisfied with the information they have received then it needs to go no further. It is similar to licence numbers. We used to detail licence numbers that are produced to us; we no longer do that. The fact that we have sighted that correct licence is good enough.

Mr STENSHOLT — I see you are asking for further powers to demand details, verification, date of birth, et cetera. I have a couple of things following on from that. One was any problems when people are asked for identification on from officer; have you ever had any problems with that?

Mr McKEON — No, our staff carry their authorities around their neck exposed at all times and they also carry customer feedback forms or cards, and company cards and they immediately write their name and number and also my contact number on that card and give that to them. It is not an issue.

Mr STENSHOLT — It has to be provided if necessary in writing, doesn't it?

Mr McKEON — That is correct.

Mr STENSHOLT — Extending that, in a number of acts it is the privilege against self-incrimination? It can be another form of errant behaviour on public transport in terms of producing further documents or answering further questions. You've asked in your submission could that privilege against self-incrimination be specifically excluded with a new part of the act? I note that in other acts, of course, it is included in terms of privilege against self-incrimination. You are asking for a big step here. How do you see it?

Mr POWER — The privilege could even be extended to the production of a ticket. If somebody is asked to provide their tick tote a revenue protection officer, they could in effect refuse to do so on the basis of that privilege. So the act or the provisions of the act which relate to revenue protection officers in general would be unworkable, so that clearly wasn't the intent of the act. The provisions are there and at the time obviously the privilege against self— incrimination wasn't taken into account. So on that basis alone —

Mr KATSAMBANIS — Do you need to extend it further than it has already been provided for in the legislation? It is simply a privilege and in this case, I mean it has been removed. You have to give your name and address.

Mr POWER — No, because the issue is whether it has to be done so explicitly within the legislation. That is actually in the discussion paper. Whether the privilege is removed by implication or whether it actually has to be done so explicitly, and there was case law that was actually quoted there. There is also other case law. It is a difficult area, but to clear the problem up, remove the privilege or exclude it.

The CHAIRMAN — Thank you, Boyd. One final question.

Mr BOWDEN — One of the responsibilities we have as legislators is ultimately we are answerable to the people. One of the tests that we in the Parliament have to consider and question in our own minds is the level of community satisfaction, and that is shades of grey on shades of grey, but it is a real test. I get the feeling that — and I have no trams in my electorate — I am down way round the Mornington Peninsula and around Westernport — the community test that we should consider is the return of conductors. I would like to suggest to you that it might be useful to do some modelling using data that you may get from the government departments prior to privatisation and the database that you are building up from your experience subsequent to privatisation. Because whether or not it comes this year or next year, the Parliament will come back to you and say we are or we are not satisfied with this community test on ultimate satisfaction, so I link that to the mechanisms and the fine-line debate about rights, powers, wrestling, detention, arrest and all this kind of stuff. I am not satisfied at this stage that there has been an evaluation about conductors, so I put it to you as a question. Do some modelling and would you consider restoring to a degree conductors to sort of just see what happens? No-one is asking you to recklessly fund this thing; I am not saying that. But I am not satisfied at the moment that conductors are irretrievably forever ruled out because it seems to me that in peak times of the year and with casualisation and the demand in the continuation and revival of conductors that you should not rule it out. Would you care to comment on that, please.

Ms De CLERCQ — In what regard — bring back conductors in regard to combating fare evasion?

Mr BOWDEN — Yes, because they had a dual role. They would give advice but they would sell tickets. I

am not sure it should be ruled out, so would you reconsider conductors?

Ms De CLERCQ — At the moment we have a unit of 45 tram attendants who roam the system in much the same way as the authorised officers. Some of them are authorised officers but they don't issue reports of offence, they offer ticket advice and customer service. They have been a successful part of the unit. I don't think that our company has ruled out hiring more tram attendants, but at this stage I think it is certainly something that we are not actively considering it.

Mr KATSAMBANIS — My electorate goes from Port Melbourne to East Malvern and from the Yarra River to Elwood. Maybe in 1996— 97 we would occasionally get some comments in the office about the return of conductors. It would be 3 possibly more years since anyone raised the issue of a conductor.

Mr McKEON — The other issue there is that even if conductors are introduced you still have your fare evasion problem because you have your hard-core fare evasion so you still need your powers under the Transport Act to deal with those people. With respect to authorised officers they cannot have that power taken away simply because a conductor has been introduced back into the system.

Mr POWER — Just on that issue about conductors as well, it is something that can be considered but it is a difficult issue, health and safety wise, a person carrying around a money bag and things like that, so it isn't as simple as say it was maybe 10 or even 15 years ago. There are a lot of other factors that have to be taken into consideration now as well. Also there is a contract with the ticket machine provider which is still on foot; there are issues with respect to that as well, so it is not a simple issue. We can provide you something in writing.

The CHAIRMAN — Thank you for your evidence this afternoon. Representatives from the Consumer Law Centre will be giving evidence next should you wish to stay and hear their contribution.

The witnesses withdrew.