

LAW REFORM COMMITTEE

Inquiry into warrant powers and procedures

Melbourne — 20 October 2004

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Witnesses

Ms J. Bowles, magistrate; and
Ms L. Hannan, magistrate, Magistrates Court Victoria.

The CHAIR — I welcome you to this inquiry by the parliamentary Law Reform Committee into warrant powers and procedures. Our proceedings are governed by the Parliamentary Committees Act, which means that any evidence you give today is subject to parliamentary privilege. We have a presumption that the evidence which is given is on the public record because it is a public hearing but if there is any evidence you would like to give in camera, you are welcome to indicate that to us and we will go in camera.

After the proceedings we will give you a copy of the transcript which is being recorded by Hansard and you will get an opportunity to correct the record and deal with any in camera issues at that point as well. We then publish the oral submissions on our web site and they are a matter of public record, and we utilise them in coming to our conclusions and making recommendations. Would you like to make a submission to us? Then we will ask some questions.

Ms BOWLES — Thank you very much for the opportunity to appear at this public hearing. My colleague Ms Hannan is here and if there are any questions that relate to policy or any other matters she wishes to answer, she is free to say that and contribute. By way of introduction, prior to my appointment as a magistrate I was employed as a solicitor with the Victoria Police Major Fraud Group. One of my major tasks was to prepare applications for section 465 search warrants and to prepare the terms of the search warrants, and to attend with the police when the warrants were executed upon solicitors' offices in order to discuss matters of legal professional privilege. I was, therefore, involved at that stage of the execution process.

Since I was appointed in 1998 I have issued numerous search warrants authorised by a large number of Acts. I prepared a manual on search warrants for the Court in March 2002, and a copy has been provided to the members. That is currently in the process of being updated with the Judicial College of Victoria. The manual concentrates on the provisions we most frequently deal with in relation to search warrants. I have therefore been involved in the application stage, the issuing stage and the execution stage of search warrants.

The committee has sought comments from the Court in relation to a number of questions. The areas I will cover are as follows: firstly, I will detail the number of search warrants issued by the Court in the last financial year — that is question 10. I will also provide details of the Magistrates' Court search warrants register — that relates to questions 9 and 11. However, the major part of the Court's submission will relate to the effect of a general warrants Act or Acts in Victoria — questions 1, 3, 5 and 7. I will also comment on the allegation made in the discussion paper that police are not complying with the requirement to bring seized items before the Court, which is question 12.

However, I thought I would commence by giving a very brief overview of the process of search warrants being issued. I am not sure how familiar you all are with the Court processes so if it would be of assistance I thought I might explain what exactly happens when someone applies for a search warrant at the Court. I have confined this summary to applications by Victoria Police but the same procedures are adopted when warrants are sought by other prosecuting agencies; for example, the federal police and authorised officers in government departments. A large number of statutes which provide for the power for search warrants to be issued have been identified by the Committee in its discussion paper.

Upon a member of the police force seeking to apply for a search warrant, the member must ensure that there is a basis upon which the warrant may be sought pursuant to the terms of the relevant Act. Depending on the type of warrant sought, an affidavit or evidence on oath must be given by a police officer who holds the appropriate rank to apply for the warrant.

In relation, for example, to section 465 Crimes Act warrants, which are sought in relation to the most serious offences — indictable offences — the officer must hold the rank of senior sergeant or above. The application is generally in the form of an affidavit rather than evidence on oath. The affidavit and search warrant are brought to the Court, faxed to the Court, or between the hours of

5.00 p.m. and 9.00 a.m. and on weekends and public holidays faxed to the after-hours registrar for the after-hours magistrate to consider the application. There is a magistrate available 24 hours a day however many days there are in a year, so the Court is always able to respond to any applications sought by the police or another prosecuting agency.

Each application is entered into a search warrants register. A member of staff then provides the affidavit and search warrant to a magistrate for consideration. Before a magistrate will issue a search warrant, the magistrate has to ensure that: the applicant is authorised to make the application; the affidavit has been duly sworn; the magistrate is satisfied that the criteria as contained in the relevant statute authorising the issuing of the warrant has been met; if there is a prescribed form for the search warrant, it is in that form; the particulars on the search warrant are consistent with the contents of the affidavit; there are reasonable grounds to believe or suspect that the property sought to be seized will be located at the address on the search warrant; and the search warrant conforms with such authorities as *Arno v. Forsyth* and *George v. Rockett*.

In the event a further affidavit is required or errors are identified on the search warrant, for example an incorrect address, any further affidavit material or amended search warrant shall be brought before the same magistrate for consideration. If the application is refused or further material is sought by the magistrate, any further material the police or prosecuting agency provides goes back before the magistrate so you cannot magistrate-shop and try to get another magistrate to issue the warrant. Affidavits will indicate whether there has been any previous application for a warrant for the nominated address and if so, whether the application was refused or if a warrant was granted, the result of that search and reasons for a further warrant being required. Copies are kept of all documents provided to the court and upon the warrant being issued it is faxed or handed to the applicant for execution. A copy of the affidavit and warrant submitted are also retained at the Court when the application is refused.

I will deal now with the number of search warrants issued by the Court. Rather than repeating page 1 of the handout I have provided, that contains the statistics which relate to the issuing of warrants for the last financial year — July 2003 to June 2004. It includes the warrants issued after hours as well as the warrants issued during the usual Court hours.

I will now deal with the Magistrates' Court search warrants register. The register contains the date, the number given to the search warrant, the address on the warrant, the type of warrant and the name of the magistrate who issued or refused the warrant. Monthly returns are provided by each region to the Melbourne Magistrates' Court detailing the number and type of warrants issued. The after-hours registrar maintains the statistics for the after-hours service. The types of warrant are classified as I have broken them down on page 1 of that handout. There is greater particularity in the records maintained by the after-hours service. You can see that Children and Young Persons Act warrants are detailed, as are Commonwealth warrants. Recommendation 41 of the Inspectors Powers of Inquiry provides, inter alia, that the Magistrates Court review the register required to be kept pursuant to section 57 of the Magistrates' Court Act 1989 to allow warrants issued under particular Acts to be more readily identifiable. The Committee considered it would be helpful if the register listed how many warrants are issued under each Act — that is at page 167. Recommendation 41 has not been implemented. The Warrant Powers and Procedures discussion paper, at page 37, also made reference to the Court's register and referred to the fact that records of unexecuted searches were not maintained. Whilst some warrants are returned unexecuted, and the result-of-search document refers to whether the warrant was executed or unexecuted, any compilation of statistics could be misleading due to the legislative provisions in place.

Just before I go on with that, if you have a look at the last document in the handout, that is referred to as a Result of Search. I will detail that a little bit later but if you have a look at that document, that comes back to the Court after the police have executed a warrant. You can see the details that are included at the top of the warrant as to when it was executed, where it was, whether it was returned unexecuted and who the warrant was served on, and an acknowledgment by the person on whom the warrant was served as to whether any damage was caused. It is then signed by the

person who has been provided with those documents at the address where the warrant was executed. I note that in passing it does refer to, 'This warrant is returned unexecuted because ...' and there is provision for reasons to be given.

Mr LUPTON — Are those return-of-search documents used in all cases?

Ms BOWLES — Yes.

Mr LUPTON — So in every situation where a warrant is issued and executed, or fails to be executed for one reason or another, the issuing judicial officer would have one of these?

Ms BOWLES — Not the issuing judicial officer.

Mr LUPTON — Who?

Ms BOWLES — I will probably get to that a bit further down. One of the issues which has arisen, and I have noted as a result of doing work in relation to this committee that the magistrate who issues the warrant — for example I sit at Broadmeadows and I will issue a warrant from Broadmeadows Court but the member to whom I issue it may execute the warrant at an address not within the Broadmeadows region. They have the option to either bring it back to Broadmeadows Court for a magistrate to sight the property that has been seized, or they are meant as soon as practicable to take it before the Court and there may be another Court which is closer to the warrant premises and therefore that would not necessarily come back to Broadmeadows. That is a matter I have identified as a bit of an issue.

The CHAIR — So you have no record of whether the warrants you have authorised have been executed or are unexecuted and what goods have been seized as a result of the search?

Ms BOWLES — If the warrant is issued at Broadmeadows and the member brings the property back to Broadmeadows, that is all married together — the affidavit, the search warrant and the return of search are all put together.

Mr DALLA-RIVA — But it may not come back to you either?

Ms BOWLES — It would not come back to me necessarily.

Mr DALLA-RIVA — You may be on a day off?

Ms BOWLES — I could well be sitting in Court. The police just turn up and if there is a magistrate around or they have to come back when a magistrate is out of Court. One of the advantages of that is a check and a balance. While what you say is right it means that I do not have any personal control over what has happened in relation to that warrant, but when I am looking at the property that has been returned, another magistrate may have issued the warrant but I am in the position to ask why an item was seized or why it took so long to execute the warrant. I do not necessarily think it is important that the magistrate who issues the warrant is actually the person who has the property brought back before them.

Mr LUPTON — Do you believe there is an advantage in it coming back to the same court?

Ms BOWLES — Yes, in terms of assisting the consistency of our filing and our records and the registry.

Mr DALLA-RIVA — Are all the courts linked by computer?

Ms BOWLES — No.

Mr DALLA-RIVA — They are not?

Ms BOWLES — They are manual.

Mr DALLA-RIVA — So there is no linkage between Melbourne and Broadmeadows? It seems ridiculous that you would expect the police to execute a warrant, to travel all the way back to the issuing court when they have the suspect in tow — —

Ms BOWLES — I agree. I think one of the things to look at is whether it is incumbent on the police to forward a copy of the result of search to the Court that issued the original warrant or whether it is going to be up to the Court — when they bring the property back we are always provided with the search warrant — to look at, ‘The issuing Court was Melbourne, these documents should be returned to Melbourne’. However, it is a resource issue in terms of the time it takes. It sounds simple but when you look at the number of warrants that are issued, it is very time consuming. Did you want to say anything in that regard, Lisa?

Ms HANNAN — No, I think that is right. Ideally you need to be able to marry up the files. The situation at the moment is probably less than ideal. Maybe there need to be some different court procedures that enable the files to be married up at all times. It may be that we need to look at our own processes to make sure that that does occur. It has really been highlighted by the work Jennifer has done, that we may need to do something in that regard.

Mr LUPTON — Wherever it goes back to, ultimately a magistrate somewhere will have one of these documents presented to him or her and it will be dealt with in the way you have set out?

Ms HANNAN — If the warrant is executed. If the warrant is not executed, you may still have nothing — Jennifer will go on to that now — because of a provision in legislation.

Mr LUPTON — But where it is executed, I take it from this document that under the heading ‘directions given after articles seized’ that when the articles are brought before the magistrate, there is a set of alternative directions that can be given there?

Ms BOWLES — Right.

Mr LUPTON — Previous witnesses have said there is a degree of inconsistency in magistrates’ decision-making about what can happen to seized property. For instance, some magistrates apparently — this is according to the evidence — do not believe that seized property can be given back to the police to be used in further investigation of the offence, yet clearly that does not follow this form at all.

Ms BOWLES — I have never heard that that is the position. The authorities indicate that the search warrant grants the police — I will say ‘police’ but it applies to all prosecuting agencies — the authority to seize the property. It does not grant them the authority to retain the property. That is why they have to bring the property before the Court to be dealt with according to law. I have never heard the proposition that you have put, that a magistrate has said, ‘I am not returning it to you’, if that is what has been said.

Mr LUPTON — That was the evidence given on behalf of the Police Association earlier today. So you would say that is not the case, that the law is clear and the magistrates understand that?

Ms BOWLES — Absolutely. It is part and parcel of what we do every day in Court.

Mr LUPTON — Yes, it is certainly implicit on this form, because it would not be there unless that was the way it operated.

Ms BOWLES — What happens is we are provided with the physical items, unless there is provision that if they are too bulky, a photograph can be provided — if it is a car that has been

seized, for example. But if you had a drug raid, the cannabis plants are brought back, any paraphernalia involved in the cultivation of the cannabis, the trucks will arrive with all of the property therein. The police will have packaged it up into brown paper bags, depending on what it is; they will have a detailed log where they have itemised everything that has been seized, we will be given a copy of that.

I guess I can only talk about my practice, which is to then go through it item by item, confirm that it meets the identity that is contained in the log, speak to the police. If it is a drug matter, ordinarily I would be saying, 'It is cannabis. I am assuming you will be wanting to convey this to the forensic science laboratory for an analysis to take place'. If they have seized computers for child pornography, for example, they will be wanting it to go to the police computer crime area. I am really astounded at that proposition. I probably cannot say anything more than that.

The CHAIR — We can certainly refer to you a copy of the written submission from the Police Association. You might want to have a look at it.

Ms BOWLES — I would be interested to see it.

Ms HANNAN — I agree. I think it is surprising in the extreme. I have never heard such an assertion.

Ms BOWLES — The only thing I could imagine is if a magistrate was not satisfied that the item fell within the terms of the warrant and was not satisfied that it was relevant to the matter being investigated.

The CHAIR — At some levels the way in which the direction is given after an article is seized — there seems to be some consistency with what they are saying in their submission which is that some magistrates hold the view that property may be retained for the purposes of analysis at the State Forensic Science Laboratory, production in Court or returned to the rightful owner. This view prevents the property from being used in the course of the investigation.

Ms BOWLES — That is why when I complete this form — for example, if two items were seized and if the police were seeking to retain that property for the purposes of their investigation, I would direct that items numbered 1 to 20 be retained in the possession of the police, pending production at Court if required. Then if, say, items 16 and 18 were drug items that they wanted to convey to the forensic science laboratory, I would make a separate direction in relation to those two item numbers.

Mr LUPTON — Okay, but to take up the chairman's point — I agree it is a potential interpretation — is it possible that some magistrates believe that to be retained in the possession of police pending production at Court limits the ability of the police to use those items for the purposes of an investigation?

Ms HANNAN — Perhaps we need to clarify what they mean by the word 'use'.

The CHAIR — They seem to refer particularly to a typical interview or interrogation where they say, 'I am showing the suspect item such-and-such and I put it to you that' — so on and so forth.

Mr LUPTON — Or putting items on public display. The example that was given was if they seized a large number of bicycles to do some kind of TV or other display where the potential owners of those stolen bicycles would be advised that police had seized a whole lot of bicycles and would owners come forward — things of that sort. They were the examples that were given.

The CHAIR — Anyway, we will pose that as an issue that has been raised with us. You might want to give us some further responses. You may want to talk to the Police Association.

Ms BOWLES — I should add, too that this form has been updated and a further direction is included. I had not noted that when we put the folders together but there is a provision that rather than sending them to the forensic science laboratory as I said, the items are to go to the computer crime group of the police force; and that is also included on the current forms that we use.

The CHAIR — Yes, the association raised two other issues which I think are worth raising with you. One is that the requirement that seized property be reviewed by a magistrate could be delegated or legislated to court registrars or bail justices. Do you have a particular view about whether that would be desirable?

Ms BOWLES — The Court has a view and I have a different view. Perhaps Ms Hannan can express the Court's view.

Ms HANNAN — The Court's view is that we have in fact corresponded with government in relation to this issue. Our view is that we should move to a position analogous to the commonwealth model and that property should not be returned. That is our primary position. With commonwealth warrants, the property is not brought before a magistrate subsequent to being seized. It takes up an enormous amount of magisterial time, it takes up an enormous amount of registrars' time and we have at various times questioned the value of it. If we are looking for a position to ensure that all the items that are seized are being produced it seems somewhat strange to rely upon the police being at a property and then coming to us some days or hours later as being a safeguard.

I suppose one of the other arguments is in relation to property being disposed of according to law in the sense that magistrates may seek to give different directions. We see a model where occupiers were provided with information in relation to their rights with the warrant and their ability to make certain applications as being a way of dealing with that. Our primary position is that we do not want to continue to view the property.

Our secondary position is that if we are to continue to view the property, it should be delegated to judicial registrars, should such a position be created, or registrars of a certain category if that position is not created. That is the court's position, but Ms Bowles has a different view.

The CHAIR — Ms Bowles, will you express your view?

Ms BOWLES — While I acknowledge that it takes time for magistrates to view the property — I should say that always when we view the property we have a registrar in attendance with us, so it takes up the time of registrars as well — it is my opinion that it provides a further check and balance on the seizure of property. Itemised lists are prepared by the police with the knowledge that the lists and property will be taken before a magistrate, and it is my view that the practice is another means by which the court maintains some control over the execution of a search warrant and ensures that the respective interests of the citizen and the police are maintained. But my view is not shared by the Court.

The CHAIR — Just to follow that up, you said it was a check to ensure that all the items seized are produced. The other thing is that all the items produced are actually seized. What would be the check and balance in terms of that evidence if it was not brought before a magistrate?

Ms HANNAN — The court's position is we simply look to the commonwealth model and say there has been no identified difficulty with the process that does not involve it being produced to a magistrate. It is purely a resource-driven position, I suppose. Resource-wise we have significant difficulty continuing to accommodate this. At the Melbourne Magistrate's Court we dedicate a magistrate every day to the position of chamber magistrate, and that basically involves issuing search warrants and returning property. Given the value of our magistrates' time, we are concerned with devoting one magistrate a day to doing those tasks. We think that registrars

of a particular category, even if we did not move to the commonwealth model, are more than capable of conducting that task.

The CHAIR — And the other possible check is that the occupier is given a list of all the property seized and a description of it?

Ms HANNAN — That would happen already, they are already given that list; but in the sense that sometimes — for example, if it is a solicitor's office, solicitors should be aware of it but you might give them some information in relation to legal professional privilege or something along those lines, and that is what happens with the commonwealth model at the moment, so I say it is purely resources that we are concerned about.

The CHAIR — What about the instance, for example, where the police want to look at the hard drive of a computer and that contains a significant amount of personal information as well as information that might be relevant to an alleged offence and the execution of the warrant? I suppose what you are suggesting is that the process available to the occupier is then to go back before the Magistrates Court and argue for the return of the property?

Ms HANNAN — But even now, if a hard disk is produced to a magistrate, the direction that would be given is that it would be conveyed to the computer crime laboratory in order to be examined. At that stage nobody knows effectively what is on there, and it needs to be looked at in its entirety by computer crime to see what is there; so it inevitably involves them viewing some personal information. I do not think there is any other effective way of doing it because often you find — this relates particularly to child pornography — that the files are all over the computer hard drive.

The CHAIR — Okay. We interrupted the flow of your submission. Do you want to return to that and then we will ask subsequent questions?

Ms BOWLES — All right. Just to take up the point that you were raising in relation to whether unexecuted warrants are returned to the Court, I have looked at the Magistrates' Court Act, section 57(10), which provides that an execution copy of a warrant must be returned, when executed, to the Court. So it could be argued that there is no requirement on the police to return unexecuted warrants to the Court. In my view there should be legislative provisions to require the return of unexecuted warrants as well as executed warrants.

I looked at warrants at Broadmeadows — I did a bit of a straw sample and looked at matters before I came here; and I have also spoken to the registrar at Sunshine — there are some unexecuted warrants that are returned by the police; and the fact that this Result of Search document makes provision for 'this warrant is returned unexecuted' might be an indication that police do return unexecuted warrants to the Court. I am not sure, I cannot speak on behalf of the police, and because the Magistrates' Court Act is not necessarily requiring that the unexecuted warrants be returned, the idea of taking statistics in that regard could be misleading.

I am just taking up the point that was raised in the discussion paper before, because if the situation is that they are not required to be returned, then any figures which talk about unexecuted warrants being returned may not take into account other warrants out there that are unexecuted.

I propose to move on to the main part of the submission. It seems to me from looking at the discussion paper and from the questions that the Court was asked, that the committee is particularly interested in seeing whether there could be a model code as it were encapsulating a search warrants Act, for want of a better name, because of the concerns of the committee and of other issues that are being raised; that there are so many Acts out there that have so many different provisions and is it possible to perhaps put them all in one body so we are clear on what standard conditions should apply.

To that extent I have considered the New South Wales legislation and identified the standard provisions contained therein, which could apply to all search warrants, and examined the other standard conditions. In relation to the handouts, page 2 is just a very brief table which explains the way in which the Search Warrants Act in New South Wales has been set up. It is a 1985 Act, and I have noted that there is another Act, the Law Enforcement (Powers and Responsibilities) Act of New South Wales — have people spoken to you about that?

The CHAIR — Yes. I believe that is not yet proclaimed.

Ms BOWLES — I looked on the Internet yesterday and it said it is not proclaimed. The librarian at work spoke to a person in the Attorney-General's department in New South Wales and talked about the fact that in relation to the search warrant provisions, because in effect they have largely placed the current Act within the provisions of that Act, there was some talk about whether it has been proclaimed. My understanding is it has not been, so for the purposes of this presentation I am proceeding on the basis of the Search Warrants Act. Have people already spoken to you about the Search Warrants Act in New South Wales? I do not want to go over old ground.

The CHAIR — In New South Wales, yes; but by all means give us your perspective on it.

Ms BOWLES — All right. I am conscious that when I worked with the police, I attended when warrants were executed interstate. However, I have not had direct experience in relation to that Act. I have tried to look at the standard conditions that apply in that Act, and I have broken those down. If you look at page 3 of the handout, the ones that have an asterisk against them are the ones it seems to me where there should be no difficulty at all in any of those provisions forming part of a model code, if I can call it such in Victoria. Page 4 then itemises those standard conditions.

On page 5 I have detailed the other standard conditions where it seems to me Parliament is going to have to critically evaluate the current provisions in Victoria, because there are so many different legislative provisions that relate to those so-called standard conditions. For example, expiry of a warrant: it is, as you know, standardised in New South Wales; here it is all over the place — you can have 30 days for a drugs warrant, 7 days for a Firearms Act Warrant, and there is no time limit for a section 465 Crimes Act warrant. In relation to the items on page 5 it is going to be a very difficult task.

I think there is a lot to be said for having standardisation and trying to get over the situation we are currently in. But it is important to understand that a huge amount of work will be required to make a determination as to what are the appropriate standard conditions. That will mean adopting what is in some Acts and amending what is in other Acts for the sake of standardisation.

Ultimately it seems to me that there are advantages to be gained in standardising many conditions pertaining to the issuing of search warrants, but it needs to be borne in mind that such an Act or Acts will not replace the numerous pieces of legislation currently in operation; and there is a need to be cautious to ensure that safeguards currently built into our legislation are not lost for the sake of consistency. What I mean by that — you may already be aware of it, having gone to New South Wales — is that it is not that the Search Warrants Act itself has meant that all these other Acts have been repealed and everyone just works pursuant to the Search Warrants Act. NSW still has 85 Acts that relate to one of the Parts — Part 3, I think — of their Search Warrants Act. It is Part 3.

In order for warrants to issue in that State, there are prescribed forms, but still in order for a magistrate or an authorised officer up there to issue a warrant, they have to go back to the original enabling legislation to see what the offences and requirements are under that Act and then make a

decision as to whether the search warrant should issue. It is important to bear that in mind, but I am sure that has already been brought to your attention.

The CHAIR — No, that is fine.

Ms BOWLES — A number of the questions which the committee has asked are directed towards whether there would be an improvement in consistency and effectiveness if there was a general warrants Act or Acts — and they are questions 1, 3, 5 and 7. My observations are for the most part confined to search warrants, and in particular to the most common forms of search warrants issued in the Magistrates Court — namely, section 465 Crimes Act warrants; section 81, Drugs, Poisons and Controlled Substances Act warrants; and section 92(1) Crimes Act warrants.

Given the proliferation of statutes authorising the issuing of search warrants, it is very appealing to consider that one model could embrace what is contained in numerous Acts of Parliament. I will not repeat what I have already said in relation to that.

The purpose of viewing the New South Wales legislation was, as I have said, to provide a comparison in relation to the manner in which legislation in New South Wales deals with the issuing of search warrants, and what if any differences emerge in relation to similar applications being made in Victoria. I will not go through the New South Wales Act because you are obviously familiar with that.

In Victoria when a search warrant is applied for it is necessary for the magistrate to consider the terms of the relevant Act which authorises the issuing of the warrant. There are several legislative sources which prescribe Forms of Warrant — for example, a number of Acts adopt the Form of Warrant in the Magistrates' Court General Regulations 2000. Some Acts adopt an amended Form of Warrant in the Magistrates' Court General Regulations — for example, the Firearms Act. There are Forms of Warrant prescribed by regulation — for example, Confiscation Act warrants; and Forms of Warrant contained in a Schedule to an Act — for example, schedule 10 of the Drugs, Poisons and Controlled Substances Act. There is no current prescribed Form for section 465 warrants.

The large number of different forms of warrant can be contrasted with the situation in New South Wales where there are only two Forms of search warrant. The Forms are prescribed in Schedule 1 of the Search Warrant Regulations 1999, and again I will not go into any further detail in relation to that.

I have already referred to the standard conditions contained on page 3, and I have broken those down to the ones which I do not propose to say anything more about because it seems to me they could very easily be placed in a model Act.

What I propose to do now, if the committee thinks it would be of assistance, is to look at the standard conditions that are contained on page 5 and contrast those with what the current position is in Victoria, so that the committee has some understanding as to what would be involved if it was intended to adopt a model similar to the New South Wales legislation.

The first matter relates to the prescribed application forms. The New South Wales Search Warrants Regulations 1999 prescribe two forms of application. They are documents which are to be sworn or declared and affirmed. Unlike Victoria it does not seem — although I stand to be corrected — that there is any provision for evidence to be given on oath. The most common forms of application in Victoria are in the form of affidavits. All affidavits will be unique in relation to their contents, but they are a consistent method of applying for a search warrant. In my view the concerns of the committee in relation to ensuring consistency, fairness and transparency are not assisted by a prescribed form as is used in New South Wales. Generally affidavits flow in a chronological manner providing the basis for the application being made. The issuing magistrate would be in a better position, in my view, to understand why the warrant is being sought when an

affidavit is provided than the manner in which the prescribed form is set out in the New South Wales legislation.

I also note that Part 2 of the Search Warrants Act provides that ‘a member of the police force may apply’. It appears there is no distinction drawn as to the rank of the police officer. In Victoria, as I have already stated, warrants sought pursuant to section 465 of the Crimes Act, for example, require the applicant to hold the rank of senior sergeant or above. For drugs warrants the applicant must hold the rank of sergeant or for the time being be in charge of a police station. It is necessary for these distinctions to be considered when there is any consideration of a model Act. Whilst the committee has referred to the ad hoc manner in which warrant powers have developed on page 26 of the discussion paper, nevertheless Parliament had a particular intention in mind when prescribing the rank of the applicant.

In relation to ‘telephone search warrants’, section 12 of the Search Warrants Act NSW permits applications by telephone in relation to all search warrants if the warrant is required urgently and it is not practicable for the application to be made in person. Whilst there are a number of Commonwealth Acts which contain such a provision — for example, section 3R of the Crimes Act 1914, section 203M of the Customs Act, and section 270 of the Radiocommunications Act — there are very few Victorian Acts which permit such applications to be made. Section 81(1) of the Confiscation Act and section 16(1) of Surveillance Devices Act are two exceptions. Thus, such a provision, if it were introduced into a model search warrants Act, would then apply to all Acts authorising the issuing of search warrants.

In relation to the third matter, ‘authorised justices can issue search warrants’.

The CHAIR — On that, subject to the conditions in the New South Wales Act, you would have to meet the criteria for a telephone search warrant. Do you have any comments on that?

Ms BOWLES — That talks about the urgency, I think, doesn’t it?

The CHAIR — Yes and ‘not practicable’ provisions.

Ms BOWLES — In relation to ‘authorised justices issuing a search warrant’, in Victoria only magistrates can issue search warrants. This is in section 57(5) of the Magistrates’ Court Act. However, in New South Wales an authorised justice can issue search warrants. I am assuming you are familiar with the people who fall within that definition. Do you want me to detail those or are you already familiar with who an authorised justice is?

The CHAIR — Please.

Ms BOWLES — An ‘authorised justice’ is defined as:

- (a) a Magistrate; or
- (b) a Registrar of a Local Court, or the Registrar of the Drug Court; or
- (c) a person who is employed in the Attorney-General’s Department and who is declared (whether by name or reference to the holder of a particular office), by the Minister administering this Act by instrument in writing or by order published in the Gazette to be an authorised justice for the purposes of this Act.

The Law Enforcement (Powers and Responsibilities) Act 2002 provides for authorised officers to issue search warrants. Authorised officers are defined in section 3(1) as:

- (a) a Magistrate or a Children’s Magistrate; or
- (b) a Clerk of a Local Court; or
- (c) an employee of the Attorney-General’s Department authorised by the Attorney-General as an authorised officer for the purposes of this Act either personally or as the holder of a specified office.

The position of the Court is that the current practice in Victoria should remain and only magistrates should have the power to issue search warrants. In my view and in the Court's view, it is vital for an independent judicial officer to have the responsibility to issue search warrants given the authorisation that search warrants provide to a prosecuting agency — namely, to commit an act which would otherwise constitute a trespass.

The next standard condition relates to 'Authorised justice who issues a warrant shall cause a record to made'. Section 13 of the Search Warrants Act provides that the authorised justice who issues a warrant shall cause a record to be made of all relevant particulars of the grounds relied upon to justify the issue of the warrant. The form of record is contained in a prescribed form in the Search Warrants Regulations 1999 NSW. Whilst there is a similar provision in the Confiscation Act in Victoria, this is not a general requirement in relation to the legislation governing search warrants in Victoria.

The basis for granting a search warrant should be apparent upon the magistrate reading the affidavit material or hearing evidence on oath. One would expect the records prepared by the authorised justices in New South Wales to contain extracts of the relevant contents of the affidavit.

Regulation 9 of the Search Warrants Regulations in New South Wales provides that an occupier of the premises to which the search warrant relates or any other person on behalf of the occupier may inspect the application for the warrant (which would represent a major departure from the law in Victoria) which includes the record of the authorised justice, a copy of the occupier's notice and the report on the execution of the warrant unless the authorised justice issues a certificate that a document is not to be made available for inspection if it could disclose a person's identity and is likely to jeopardise that or any other person's safety or may seriously compromise the investigation of any matter.

Given the sensitive nature of the contents of many of the affidavits the Court receives, it would be interesting to note the number of certificates issued by authorised justices. There may be public interest immunity concerns in relation to such information contained in the records being disclosed. Presumably the purpose of maintaining a record is for accountability.

The comments made by Victoria Legal Aid of a lack of consistent levels of scrutiny of warrant applications by magistrates and by the Victorian Aboriginal Legal Service of some magistrates rubber stamping warrants at pages 36 and 37 of the discussion paper are totally rejected by the Court. The basis upon which such allegations are made is unclear. In addition, there has not been criticism in the superior Courts of magistrates inappropriately issuing search warrants or failing to appropriately scrutinise search warrants.

The need for such a record and the advantage in such a record being maintained would have to be demonstrated for such a provision to be introduced in Victoria. It could be said that such a record represents double handling without any benefit to be gained. Magistrates and staff are under tremendous pressure to complete the work of the Court, and given that approximately 20 000 warrants were issued from the 1 July 2003 to 30 June 2004, were such requirements to be introduced it would constitute a further demand on their time.

In relation to the 'time for the execution of the warrant', section 19 of the Search Warrants Act provides that a search warrant may be executed by day but shall not be executed by night unless the authorised justice by the warrant authorises its execution by night. Section 19(1A) provides that an authorised justice is not to authorise the execution of a search warrant by night unless certain criteria are present. There is a strong presumption in favour of execution occurring during daylight hours.

In Victoria the majority of the Acts authorising the issuing of search warrants are silent as to the time of execution. There are some Acts which require the search warrant to indicate whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night,

for example, the Police Regulation Act, the Prostitution Control Act, the Firearms Act and the Wildlife Act. The Drugs, Poisons and Controlled Substances Act expressly provides that drug warrants may be executed during the day or night. Section 465 of the Crimes Act is silent on the matter.

Given the number of warrants issued by magistrates working after hours, there would need to be consideration given as to whether the principle contained in section 19 of the Search Warrants Act should be adopted in Victoria. Such consideration would include whether there is evidence of police executing search warrants at inappropriate hours without justification.

In relation to the ‘expiry of the warrant’, section 20 of the Search Warrants Act prescribes when a search warrant ceases to have effect. It provides a uniform time frame within which search warrants are to be executed — in relation to telephone warrants it is 24 hours after issue and with other search warrants it is 72 hours after issue and there is provision for an extension to a maximum of 144 hours after issue. Alternatively, the warrant ceases to have effect if it is withdrawn by the authorised justice who issued the warrant or when it is executed, whichever occurs first.

The Victorian Acts provide for various time frames or no time frame within which warrants are to be executed. Apart from warrants issued pursuant to the Fisheries Act and telephone warrants for tracking devices obtained under the Surveillance Devices Act, none of the other warrants which are frequently issued by the Court provide for warrants to cease to have effect after 72 hours. There are a number of Acts which provide a time frame for the execution of search warrants — for example, not later than seven days after issue. This applies in respect of search warrants issued under the Firearms Act, the Prostitution Control Act, the Surveillance Devices Act and the Wildlife Act. Within one month of the date of issue applies in respect of the Drugs, Poisons and Controlled Substances Act Warrants, and a period not exceeding 90 days applies in respect of tracking device warrants issued under the Surveillance Devices Act. There is no time limit applicable to section 465 Crimes Act warrants.

Subject to the nature of the investigation, it would be anticipated that warrants would be executed as soon as practicable after they have been issued. It would seem to be appropriate that time limits be introduced in respect of the life of all search warrants. A period of 72 or 144 hours would appear to be inappropriate in respect of certain warrants — for example, warrants authorising tracking devices (not strictly search warrants and in view of the current legislative provisions). It is a shorter time frame than the seven days provided for in the commonwealth Crimes Act and Customs Act warrants.

Consideration would need to be given to the views of various stakeholders. It would seem to be desirable for there to be a consistent period of time, if possible, within which warrants are to be executed. A distinction would need to be drawn, however, between urgent telephone applications and other applications made to the Court.

In addition, section 20 of the New South Wales Act prescribes that when a warrant is executed it ceases to have effect. Regard would need to be had to any warrants which authorise more than one entry under the same warrant — for example, section 2.5.21(3) of the Gambling Regulation Act 2003.

The final standard condition relates to ‘Report to the authorised justice’. Section 21 of the New South Wales Act requires a report to be furnished by the person to whom the warrant was issued within 10 days of the execution of the warrant or its expiry, whichever occurs first, to the authorised justice who issued the warrant. The report must include whether or not the warrant was executed and the reasons in relation thereto, whether an occupier’s notice was served, in relation to a telephone search warrant a copy of the form of warrant and occupier’s notice and such other prescribed particulars. The report provides for accountability in relation to the execution or non-execution of a warrant.

In Victoria, there are specific provisions in the legislation which require any property seized to be brought before the Court so that the matter may be dealt with according to law — section 465(3) of the Crimes Act, section 81(4) of the Drugs, Poisons and Controlled Substances Act and section 78(1)(b)(ii) of the Magistrates' Court Act. Unlike in New South Wales, which is what we discussed earlier, the police in Victoria are required to attend at Court with the property. Section 78(5) of the Magistrates' Court Act says that if the property is bulky or cumbersome, evidence may be given on oath as to the present whereabouts of the property and by producing a photograph of the property. The property when brought to court is sighted by a magistrate. The magistrate, upon viewing the property, makes directions in writing in relation to the property. The magistrate may or may not be the magistrate who issued the warrant, and in relation to the Melbourne Magistrates' Court and the metropolitan Courts in the majority of cases it is not likely to be the same magistrate.

The form containing the directions given after property has been seized is headed 'Result of search', which is the last document that we have already looked at. The Result of search warrant Form has been completed prior to the property being brought before the Court. The Result of Search contains the following particulars: details of when the search warrant was executed; the reasons why the warrant is returned unexecuted; upon whom the copy of the warrant was served and the address; signed acknowledgment by the person who is served the warrant that she or he has received a copy of the warrant; and whether any damage was caused at the nominated premises.

It would be a matter for Parliament and for submissions from relevant stakeholders as to whether a report in accordance with section 21 of the Search Warrants Act NSW should replace or be in addition to the current Result of Search and the bringing before the Court of the property seized. It is arguable that there is greater accountability in the current Victorian regime as the occupier has input into the documentation and the property is actually produced before a magistrate.

Question 12 provided by the Committee referred to the allegations which were made in respect of non-compliance by the police in relation to bringing seized items before the Court. The committee, at page 59 of the discussion paper, noted that "A number of stakeholders echoed legal commentator Professor Richard Fox in claiming that the police act illegally by failing to fulfil this requirement." Professor Fox was referring to the alleged failure of the police to carry property before the Court in order for it to be dealt with according to law.

Justice Brooking in *Allitt v. Sullivan* 1998 VR 621 stated: "Once a thing has been found, identified and seized, then neither the warrant nor the section pursuant to which it was issued says anything in terms by way of authorising the executing officer to return or use the thing seized: his power and his duty is to carry it before a justice to be dealt with according to law."

Thus, whilst Professor Fox's comments are correct, that in the event police are not carrying the seized items before the Court they are acting unlawfully in retaining the property, the basis for making the assertion that police are not complying with this requirement is unclear.

One would have expected that if this was the case, there would be challenges in the Courts to the unlawfulness of the police conduct in retaining the property and that submissions would be made to exclude the evidence. I am unaware that this is the case.

In order to clarify whether such as an assertion could be sustained a registrar at Sunshine Court conducted an examination of the search warrants issued at that court for the month of June 2004. His findings were consistent with what I am putting before the committee, that it does seem that property is being brought before the Court for authorisation to retain the property.

In addition, there is the anecdotal evidence from when I worked with the Major Fraud Group prior to my appointment. As I have said, a significant part of my work involved the preparation of section 465 search warrants, and it was certainly the practice of the members of the police with whom I worked to take any property seized before a Court.

In conclusion, a model Search Warrants Act which prescribes search warrant forms and standardises many conditions pertaining to the issuing of search warrants would invariably promote consistency and fairness. However, it should be remembered that such an Act does not replace the plethora of legislation which provides for the issuing of search warrants, and before Parliament could determine the appropriate provisions of such an Act there would need to be a careful analysis of the current provisions and any special requirements which pertain to particular search warrants — for example, the amendment to the Confiscation Act introduced last year which amended schedule 10 to the Drugs, Poisons and Controlled Substances Act, the prescribed form for drugs warrants. The warrant now contains a clause that permits the magistrate to direct that property seized under that warrant is to be held or retained as if it were tainted property under the Confiscation Act.

Clearly any submissions committee members receive from those people who have experience with the New South Wales legislation — and it seems you have already embarked on that — would provide great insight as to the effectiveness of the New South Wales legislation and any lessons to be learnt in Victoria. That concludes my submission.

The CHAIR — Thank you very much. Thank you for your very detailed analysis of the Search Warrants Act of New South Wales and how it relates to Victoria.

Ms BOWLES — Does it accord with your understanding, Mr Dalla-Riva?

Mr DALLA-RIVA — We will let you know. It was very thorough.

The CHAIR — Do you mind if we ask you some questions that may or may not relate to aspects of the submission itself?

Ms BOWLES — Not at all.

The CHAIR — First of all I just wanted to ask you a question about the videotaping of searches, because that is one of the requirements now in relationship to searches in New South Wales. Would that be something that in your opinion would assist the court in terms of determining the veracity of the search and the items seized?

Ms HANNAN — We already have experience of viewing property via video. It is the case already that where there are large hydroponic set-ups, for example, that is videoed. And it is the video that is the evidence that is returned to the court in terms of what has been seized. It is paused at various points so that things can be counted or identified. So we already have experience of that. I am not sure that it overly advances it. I think it has greater value down the track, quite frankly, in terms of evidence in criminal proceedings.

Ms BOWLES — Where there are issues as to how, where, when, what.

The CHAIR — That is what I am saying, if it is a requirement. Just as it is a requirement that interviews be videotaped, there is a requirement in New South Wales that searches be videotaped from an evidence point of view.

Ms BOWLES — Obviously, as is the case with interviews being conducted, it certainly means that there cannot be any dispute as to what occurred when the warrant is executed. Is it a resource issue?

Mr LUPTON — Is that right or not? There have been alternative viewpoints put about this. We can envisage a number of different types of search warrants being executed: a few officers turning up at a house, being let in and simply videotaping their arrival and the search that goes on. Contrast that with a major operation at a factory with potentially dozens of police officers, numerous rooms being searched all at the one time, the possibility that videoing those kinds of things would not really give a true and accurate picture of the way the search was carried

out. It would not necessarily show everything that happened. There would be stops and starts and presumably breakdowns would occur from time to time. It may simply lead to another area of argument.

Ms HANNAN — I think a requirement could prove very difficult. For example, one often finds that roof space is being searched, places that it would be very difficult to video — under houses, things of that nature, where it is simply not possible. Those items at this stage would then need to be removed from their original place where they were found and placed out somewhere where they could be videoed. I am not sure that there is overly much value.

Where it really is of value is in relation to things that change their character as a result of time — and that is, specifically, in relation to cannabis crops. When you go in and there are a hundred grow tubs and each has a plant in it, it is very useful to have that on video, because once they are removed there always seems to be arguments by the different botanists about how many plants were there, what constitutes a root structure and things along those lines.

Mr LUPTON — That is more to do with the evidence in the ultimate trial rather than whether the search warrant was executed in a valid manner?

Ms HANNAN — That is right, and that is what we are saying. The video itself is of more use down the track. We use it as a matter of convenience now so that we do not have to go to Collingwood, which we describe as the cages. There are some police cages at Collingwood, and that is where, if they have a large hydroponic factory, they will bring it in and put it in the cages rather than bring a whole crop to the Melbourne Magistrates Court, which is probably appropriate.

The CHAIR — Another issue which was raised with us was about surveillance device warrants, which by their nature are covert, and the question as to whether or not there should be, given the capacity for the misuse of such warrants, more balance in relation to the preconditions that surround them. There were suggestions from the criminal bar association yesterday that a number of things should occur with those warrants — the preconditions for the issue of a surveillance device warrant be tightened; there be greater clarity of the circumstances under which a warrant is required; the duration of a warrant be reduced from 90 days to 30 days; prior to there being an extension of an existing warrant, justification for the extension should be demonstrated from the product previously recorded; accountable records; a report to the issuing officer on the nature and quantity of the product recorded; time limits imposed on the retention of the recorded product; and greater penalties for a breach of any of the prohibitions under the act. From a policy perspective, do you have any views on that?

Ms HANNAN — The Magistrates Court only issues tracking device warrants. We do not issue the remainder of the surveillance device warrants. I think accountability in relation to anything that interferes with personal liberties to that extent is appropriate. I think there should be significant accountability, but I cannot comment specifically in relation to those warrants; they are not from our court.

Mr DALLA-RIVA — There was some discussion with previous witnesses about what they called a public interest monitor, somebody who would act as a third party advocating for the public interest when a warrant is issued. The police are there requesting, via an affidavit, the warrant. There is really nobody there countering the arguments to say why a warrant should not be issued, and there has been a suggestion that there should be this particular public interest monitor, similar to an advocate, who would be there to oversee the magistrate or the justice in the issuing of the warrant.

The CHAIR — For covert warrants.

Mr LUPTON — It only applies to covert warrants.

Mr DALLA-RIVA — But it gets back to the interesting issue about some other witnesses who have this view that, because the police are arriving at the court seeking a warrant, the magistrates or the justices are automatically issuing them.

Ms HANNAN — It is just nonsense.

Mr DALLA-RIVA — That is what I want to get on the record.

Ms BOWLES — First of all, the vast majority come by — —

Mr DALLA-RIVA — It is important for the committee to get a balance, because there have been some issues identified in some of the submissions that have been put forward that you have clearly outlined as being totally rejected by the court, and I thank you for those comments. It is important to get on the record, so we have some balance in our committee, some of the issues that have been raised. Some of those issues include that magistrates or justices are just issuing warrants without any consideration because they have been presented by the police. I want to hear your views on how you approach a police officer who applies for a warrant.

Ms HANNAN — I do not generally see the police officer who is applying for the warrant. The police officer arrives at the Melbourne Magistrates Court at the counter on the second floor or the warrant arrives by fax. That warrant is then brought to me in my chambers. The clerk who brings the warrant then generally leaves the room. I then take whatever time is necessary to read the warrant and then ask someone to come and pick it up, and it is taken back downstairs. I do not see the police officer at all. The police officer's only contact with me is via that affidavit. The amount of warrants that are sent back or rejected is illustrative of the point that magistrates do not, have not and will not rubber stamp warrants. We regard it as an incredibly important task. We regard it as part of the duty to which we have sworn. We reject wholeheartedly any suggestion that we do not carry out our function.

Ms BOWLES — I do not think I can add anything to that. I just endorse those comments absolutely.

Mr LUPTON — I just want to say this: the evidence that we heard yesterday is actually different to the point about whether warrants are ever rubber stamped, which in fact was not evidence that we heard in oral submissions. There is a process in Queensland where there is a public interest monitor that is used basically — —

Ms BOWLES — How does that work?

Mr LUPTON — It is used in covert surveillance warrant applications in the superior court. The argument is that in certain circumstances, rather than having simply one party that is seeking an application coming before a judge, it is appropriate to have another interlocutor put an alternative view rather than the judge having to do that himself or herself.

The CHAIR — It is the public interest test of granting such a covert warrant.

Mr LUPTON — That does not seem to be applicable to the role the Magistrates Court plays in Victoria, but I want it understood that that was the context of the evidence we heard yesterday and it did not go to the question of whether magistrates are acting properly or improperly. That is not the point.

The CHAIR — In fact that seems to be outside your jurisdiction.

Ms HANNAN — It is.

The CHAIR — The Police Association put to us in its submission its view that the number of warrants could be, in essence, distilled to three search warrants: warrants to search for persons; warrants to search for evidence or things; and extra-territorial extradition warrants. In

terms of your review of the New South Wales warrants act and the discussion we have been having, have you any views on whether that would be a desirable reform?

Ms BOWLES — I must admit that I do not feel at this stage I could categorise it in those limited ways. The focus has been on the way I have presented my paper, and I have not actually broken it down in my mind to those particular categories. I would prefer not to comment at this stage until I have had a chance to think about that.

Mr LUPTON — I would like to ask about some evidence we heard about the operation of the PERIN system. I believe it is schedule 7, part 4 of the Magistrates' Court Act.

Ms HANNAN — We brought it with us in anticipation that you may ask about it.

Mr LUPTON — We have had some evidence that there is a difference in sentencing options available to magistrates if people have come via the PERIN process in default of payment, that exceptional circumstances have to be shown otherwise a sentence of imprisonment is imposed, and that is in distinction to the normal Sentencing Act provisions if people simply come to the general open Magistrates Court. Could you comment on your experience in relation to that issue?

Ms HANNAN — Our experience is that it is a difficult piece of legislation that has practical impacts that perhaps were not anticipated at the time of its introduction. It is fairly unwieldy in terms of its day-to-day operation in the sense of the processes that have to be gone through in order to get to particular points. It is certainly an area where it would appear appropriate for there to be some review.

Ms BOWLES — I agree with that. It is an incredibly difficult area where a lot of people have difficulties, whether it be intellectual difficulties or psychological difficulties, a whole host, and they come before you in relation to huge amounts that are outstanding as a result of these infringement notices that have not been paid. While the legislation makes provision for them, there are a lot of people who may not fall within that category but run the risk of being imprisoned in relation to not paying parking fines and matters of that nature. Increasingly we are spending a lot more time in Court with these matters coming before us and people with thousands and thousands of dollars outstanding. It is a very difficult area.

Ms HANNAN — If we intervened earlier in the process and allowed people to convert fines to community work very early on, I think we would be in a much better position.

Ms BOWLES — That is right.

The CHAIR — In relation to the admissibility of illegally obtained evidence, which is subject to the normal common law rules and *Bunning v. Cross* and so on, New South Wales has an Evidence Act which codifies those provisions in section 138 and creates a presumption that:

(1) Evidence that was obtained:

- (a) improperly or in contravention of an Australian law, or
- (b) in consequence of an impropriety ...

is not to be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained.

And then it gives a whole lot of criteria. Do you think the court would be aided by having greater guidance as to when evidence should be admissible or do you think the current provisions work well from your point of view?

Ms BOWLES — The only other matter relates to amendments being made in relation to search warrants — and I will give an example. The Confiscation Act amended the Drugs, Poisons

and Controlled Substances Act Schedule for drugs warrants and section 465 Crimes Act warrants, but it was within the Confiscation Act. It is very difficult to keep on top of every bit of legislation, and for search warrants it is really important that the magistrates are authorising or issuing warrants which comply obviously with the law. Unlike at other times, if there had been an amendment to the Drugs Act warrants it would have been an amendment to the Drugs, Poisons and Controlled Substances Act, we would have been alerted and would have looked at that. It was very difficult in the Confiscation Act because buried within a whole host of amendments were these major changes to 465 Crimes Act warrants and Drugs Act warrants.

Mr DALLA-RIVA — Read my contribution in *Hansard*. It is what I raised in the Parliament.

Mr LUPTON — No-one else has.

Mr DALLA-RIVA — Nobody else has, but that is what I raised in Parliament.

Ms BOWLES — I am not going to get political, it is just from the point of view of the court it is very important.

The CHAIR — Thank you for taking the time to give us the benefit of your knowledge and expertise today. We appreciate the time you have taken to appear before us. You have given us a lot of good analysis and food for thought.

Ms BOWLES — Thank you for giving us the opportunity to present the Court's position.

Witnesses withdrew.