Our Ref: SU002079

19 OCT 2004

Mr Rob Hudson MLA
Victorian Parliament Law Reform Committee
Level 8, 35 Spring Street
MELBOURNE VIC 3000

Dear Mr Hudson

INQUIRY INTO WARRANT POWERS AND PROCEDURES

Please find enclosed EPA Victoria's submission made in response to the discussion paper released by the Law Reform Committee, concerning warrant powers and procedures.

EPA Victoria welcomes the opportunity to contribute to the Committee's review of warrant powers and we would be pleased to make an oral submission to the Committee if the Committee wishes to explore further the issues we have raised.

If you have any queries about the submission, please contact Wayne Robins, Manager, Strategic Co-ordination on 9695 2537.

Yours sincerely

MICK BOURKE
CHAIRMAN
Introduction to Environment Protection Authority Victoria

The Environment Protection Authority (EPA) is Victoria’s environmental watchdog. It is a statutory authority established by the Environment Protection Act 1970 and reports to the Victorian Parliament through the Minister for Environment. EPA’s mission is to work with all Victorians to enable the achievement of a clean, safe and sustainable environment using our statutory capacities, knowledge, experience and continuing our valued relationships.

Powers of EPA’s Authorized Officers

EPA authorized officers* play an essential role in protecting Victoria’s environment and are provided with a range of powers specifically designed to assist them in performing their duties. One of these powers is the right to enter private property under specified circumstances.

Authorized officers may enter at any time premises that present a high environmental risk. These premises include those used to store, reprocess, treat or otherwise handle industrial waste, premises being used as a factory or any premises in which an industry or trade is being carried on. The power to enter any other premises from which any waste or pollutant is or is likely to be discharged or deposited is restricted to ‘reasonable times’ only.

These powers enable officers to rapidly respond where a pollution event is occurring or is likely to occur. By gaining immediate access, officers are able to contain and abate pollution and minimise environmental impacts. EPA Officers are also able to investigate pollution incidents with a view to establishing liability, determining the extent of environmental impacts and ascertaining whether any mitigating circumstances exist. This is important as pollution events at commercial properties have the potential to cause significant damage to the surrounding environment. The intricate nature of some ecosystems is such that if pollution is not abated quickly, the ramifications can be catastrophic and far-reaching. Significant risk to human health can also arise in many situations, further necessitating prompt action. Evidence necessary to establish liability may dissipate quickly and therefore must be obtained promptly.

* Authorized officers undergo considerable training to ensure that they understand the powers provided under the Environment Protection Act 1970 and are able to act within the law and in a consistent manner in all situations.
In conducting its Inquiry into the Powers of Entry, Search, Seizure and Questioning by Authorized Persons (the Inspectors’ Powers Inquiry), the Committee requested that EPA provide additional information on where additional powers might enhance the Authority’s ability to perform its legislative role. EPA proposed that an additional power enabling officers to gain a warrant for entry to residential premises would greatly assist EPA in investigating pollution incidents.

The inability of authorized officers to enter residential premises except when a pollution event is currently occurring is particularly problematic with respect to prevention of potential environmental hazards, or collection of evidence of environmental crime, that is located on a residential property. While EPA understands and accepts that the Authority’s staff should not be able to enter residential properties without a real and demonstrated need to do so, the current situation whereby authorized officers have no capacity to apply to enter a residential property where there is a reasonable suspicion that an indictable offence is or has occurred is a severe restriction on our capacity to protect the environment.

As noted in EPA’s submission to the Inspectors’ Powers Inquiry, one means of rectifying this apparent deficiency in the current legislation is to include a provision in the Act to enable search warrants to be obtained with respect to residential premises where the Authority believes on reasonable grounds that an indictable offence against the Act has been committed.

**Case Study**

An investigation into the dumping of dangerous chemicals led to a licensed prescribed industrial waste treater and an employee of that company. There was strong suspicion that the employee had quantities of dangerous chemicals at his residence. The criteria for entry to residential premises under the *Environment Protection Act 1970* was not made out however, there was reasonable grounds to believe an indictable offence was being/had been committed.

EPA sought the assistance of Victoria Police in this matter who obtained a s465 search warrant under the *Crimes Act 1958* on the evidence put forward by EPA. The warrant was executed as a joint agency operation. Significant quantities of chemicals were seized from the individual’s home. The administrative process required to persuade Victoria Police to execute significant powers in matters where its members had little expertise and were relying largely on the information of a client agency were unduly lengthy and complex, and as such were an inefficient mechanism to address any risk of urgency.
Our Ref: SU002054

01 OCT 2004

Mr Rob Hudson MLA
Victorian Parliament Law Reform Committee
Level 8, 35 Spring Street
MELBOURNE VIC 3000

Dear Mr Hudson

INQUIRY INTO WARRANT POWERS AND PROCEDURES

I write in regard to the above inquiry, currently being undertaken by the Parliamentary Law Reform Committee. EPA Victoria would like to take the opportunity to contribute to the Committee’s review, however we have only recently become aware of the inquiry. As such, I would like to seek an extension to the advertised closing date for submissions of 1 October 2004. In order to provide sufficient time to prepare a submission, a three week extension is requested.

EPA Victoria looks forward to contributing to the Committee’s review. If you have any queries concerning this request, please contact Wayne Robins, Manager Strategic Co-ordination on 9695 2537.

Yours sincerely

MICK BOURKE
CHAIRMAN