



Australian Government

Australian Quarantine and Inspection Service

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2 JUL 2004

Senate Standing C'ttee
for the Scrutiny of Bills

The Secretary
Senate Standing Committee for Scrutiny of Bills
Suite SG-49
Parliament House
CANBERRA ACT 2600

Dear Ms Paull

Thank you for your letter of 8 April 2004 inviting the Australian Quarantine and Inspection Service (AQIS) to make a submission to the inquiry by the Senate Standing Committee for the Scrutiny of Bills (the Committee) on entry and search provisions.

In the light of the Committee's invitation, AQIS has reviewed the submission and evidence provided to the Committee in relation to its 1999 inquiry into entry and search provisions, the Committee's Report of April 2000 and the Government Response of August 2003 to the Committee's Report.

Since the Committee's last report, AQIS has introduced a new practice of providing occupiers with an information sheet when entering premises under a search warrant. The information sheet sets out the rights of occupiers in relation to the relevant legislation. As an example, I attach a copy of the information sheet in relation to the *Export Control Act 1982*.

Apart from the introduction of the information sheet, no significant changes have been made to AQIS practices concerning the exercise of search and entry powers since AQIS' contribution to the previous inquiry; this contribution was reflected in the Committee's Report at that time. I therefore do not propose to make a more substantive submission on this occasion.

Thank you again for the invitation to make a submission.

Yours sincerely

MERYL STANTON
Executive Director

June 2004

Enc.

Export Control Act 1982

Search of premises: Rights of the Occupier

A Search Warrant has been issued by a Magistrate, under the provisions of the Export Control Act 1982 for these premises. It gives the authority and power to an Authorised Officer to enter and search the premises listed in the Search Warrant. It also gives the executing officer authority to:

- obtain assistance as is necessary and reasonable in the circumstances;
- use such force against persons and things as is necessary and reasonable in the circumstances;
- seize evidentiary material [including the taking of samples];
- use electronic equipment at the premises [including computer, video and audio equipment];

YOUR RIGHTS

- If you are dissatisfied with the issue of the warrant or the conduct of the search, you should seek legal advice. Such advice may assist you to decide whether your rights have been infringed and what action to take. If your rights have been infringed, you may be entitled to a legal remedy.
- You will be given a copy of the search warrant by the executing officer.
- You are entitled to be present whilst the search is conducted. This right ceases if you impede the search in any way.
- It is an offence to obstruct or hinder an authorised officer in the execution of their duty.
- A receipt will be given to you for any property taken from the premises.
- If you have any concerns about the manner in which the warrant is executed, you should speak with your legal adviser or contact the AQIS National Manager Compliance & Investigations on 02 6272 5191.
- If you have any specific complaints about alleged misconduct of the AQIS officer(s) conducting the search you should contact the AFFA Business, Ethics, Security & Investigation Unit on 1800 813 753.
- A complaint may also be lodged with the Commonwealth Ombudsman at the following address:-
Commonwealth Ombudsman
P.O. Box 442
Canberra ACT 2601
Telephone: (02) 6247 5833

The following provisions of the Export Control Act 1982 set out the rights of an occupier of premises searched pursuant to a warrant under that Act.

11B Details of warrant to be given to occupier etc.

- (1) If a warrant in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the executing officer or an officer assisting must make a copy of the warrant available to that person.
- (2) The executing officer must identify himself or herself to the person at the premises.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

11C Occupier entitled to be present during search under warrants

- (1) If a warrant issued in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the person is, subject to Part 1C of the *Crimes Act 1914*, entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

11D Use of equipment to examine or process things

- (1) A person who enters premises under this Part may bring to the premises and use any equipment reasonably necessary for the examination or processing of things found at the premises for the purposes of exercising a power conferred on the person under this Part.
- (2) If:
 - (a) it is not practicable to examine or process the things at the premises; or
 - (b) the occupier of the premises consents in writing;the things may be moved to another place so that the examination or processing can be carried out.
- (3) If things containing electronically stored information are moved to another place under subsection (2), the person referred to in subsection (1) must, if it is practicable to do so:
 - (a) tell the occupier the address of the place and the time at which the examination or processing will be carried out; and
 - (b) allow the occupier, or a representative of the occupier, to be present during the examination or processing.
- (4) A person who enters premises under this Part may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises for the purposes of exercising a power conferred on the person under this Part, if the person believes on reasonable grounds that:
 - (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or the thing.

11E Use of electronic equipment at premises

- (1) A person who enters premises under this Part may operate electronic equipment at the premises for the purposes of exercising a power conferred on the person under this Part if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- (2) If the person, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:
 - (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
 - (c) if the material can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.
- (3) A person may seize equipment under paragraph (2)(a) only if:
 - (a) it is not practicable to put the material in documentary form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c); or
 - (b) possession of the equipment by the occupier could constitute an offence.
- (4) If the person believes on reasonable grounds that:
 - (a) evidential material may be accessible by operating electronic equipment at the premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

- (5) The person must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
- (6) The equipment may be secured:
 - (a) for a period not exceeding 24 hours; or
 - (b) until the equipment has been operated by the expert;whichever happens first.
- (7) If the person believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate for an extension of that period.
- (8) The person must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

11F Compensation for damage to equipment

- (1) If:
 - (a) equipment is damaged because of being operated as mentioned in section 11D or 11E; and
 - (b) the damage was caused by:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person (other than the occupier or a person employed by the occupier) operating the equipment;compensation for the damage is payable to the owner of the equipment.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and the employees and agents of the occupier, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

11G Copies of seized things to be given

- (1) Subject to subsection (2), if a person who enters premises under this Part seizes:
 - (a) a document, film, computer file or other thing that can readily be copied; or
 - (b) a storage device the information in which can readily be copied;the person must, if asked to do so by the occupier of the premises or another person who apparently represents the occupier and is present when the seizure takes place, give a copy of the thing or the information to that person as soon as practicable after the seizure.
- (2) Subsection (1) does not apply if:
 - (a) the thing that has been seized was seized under paragraph 11E(2)(b) or (c); or
 - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

Export Control Act 1982

Search of Premises - Rights of the occupier

I am the person who is the occupier of the premises that are the subject of this Search Warrant. I have been asked to sign this notice acknowledging that I received a copy of the following documents:

Statement of the Rights of the Occupier

A copy of the Search Warrant

I am/am not prepared to sign this notice on the understanding that my signature purely acknowledges receipt of the documents and can in no way be construed as having any other relevance to this matter.

.....
(Occupier)