

GOVERNMENT DEPARTMENTS AND AGENCIES, RIGHT OF ENTRY TO PRIVATE PROPERTY,
STATUTES

2040. Mr M.G. House to the Minister for Planning and Infrastructure

- (1) Will the Minister provide the details of the statutes under his ministerial portfolio that allow officers of the department, agencies or persons appointed by them to enter private property -
 - (a) with a warrant; and
 - (b) without a warrant?
- (2) Will the Minister detail the circumstances under which such entry may be exercised?
- (3) Will the Minister advise whether there is a difference with regard to such entry between -
 - (a) a private residential property; and
 - (b) other private property?

Ms A.J. MacTIERNAN replied:

DPI Response

In relation to statutes administered by the Department for Planning and Infrastructure, five (5) Acts provide powers of entry to places, premises, land and/or vessels.

- (a) Four (4) statutes provide powers of entry without a warrant, in certain circumstances.

These are the:
Perth Parking Management Act 1999;
Pollution of Waters by Oil and Noxious Substances Act 1987;
Rail Safety Act 1998; and
Western Australia Marine Act 1982.
- (b) Two (2) statutes provide powers of entry with a warrant in certain circumstances.

These are the:
Rail Safety Act 1998; and
Transport Co-ordination Act 1966.
- (2) Perth Parking Management Act 1999

Section 21 of the Perth Parking Management Act 1999 empowers inspectors appointed by the chief executive officer of the Department to enter land or buildings without a warrant only at a reasonable time and only to the extent necessary to determine whether offences against the Act have been committed. There is no power for an inspector to enter a dwelling.

Pollution of Waters by Oil and Noxious Substances Act 1987

Section 29 of the Pollution of Waters by Oil and Noxious Substances Act 1987 empowers an inspector to board a vessel without a warrant for the purpose of ascertaining whether the provisions of the Act applicable to the vessel are being complied with, or to enter "any place on land" without a warrant for the purpose of investigating a discharge or suspected discharge into State waters in contravention of the Act.

Rail Safety Act 1998

Section 46 of the Rail Safety Act 1998 empowers an officer authorised by the Director General of the Department to enter a place associated with a railway or the operation of a railway and to inspect the place, or any railway, rail infrastructure or rolling stock or other vehicle, only if reasonable written notice is given.

If entry has been refused, is opposed or prevented, or cannot be obtained, or if notice of the required entry cannot be given without unreasonable difficulty, unreasonable delay or defeating the purpose for which entry is intended, then a warrant may be issued by a justice authorising an authorised officer to enter a place associated with a railway or the operation of a railway and inspect the place, or any railway, rail infrastructure or rolling stock or other vehicle.

Transport Co-ordination Act 1966

Section 49 of the Transport Co-ordination Act 1966 empowers the issue of a warrant by a justice to a member of the Police Force or a person authorised by the Director General of the Department, authorising that member of the Police Force or that person to enter premises, where there is reasonable cause to suspect that there may be on the premises any vehicle, goods or documents concerned in any offence or suspected offence or attempt to commit an offence against the Act.

Western Australia Marine Act 1982

For the purposes of determining the safety manning of trading ships, the Manning Committee constituted under the Western Australia Marine Act 1982 may enter and inspect any vessel in respect of which a determination is to be made or reviewed and, for the purposes of such entry and inspection, enter any place or premises adjacent thereto.

Where the chief executive officer of the Department has reason to believe that a casualty has occurred to a commercial vessel or any incompetence or misconduct has occurred on the part of any certificated master, mate, marine engineer, marine engine driver or coxswain on a commercial vessel, section 102 of the Western Australia Marine Act 1982 empowers an officer of the Department, or another person appointed by the chief executive officer of the Department for this purpose, to board and inspect a vessel or to enter and inspect any premises, for the purpose of conducting a preliminary inquiry into the casualty, incompetence or misconduct.

- (3) a) and b) Section 21(2) of the Perth Parking Management Act 1999 expressly provides that an inspector is not authorised to enter a dwelling.
- The relevant provisions of the other statutes do not differentiate between private residential property and private property.

LandCorp

- 1) There are no provisions under the Western Australian Land Authority Act which empower officers to enter private property with or without a warrant.
- 2) Not Applicable.
- 3) Not Applicable

Main Roads Western Australia

- 1) a. Nil
- b. Land Administration Act 1997
- 2) Entry for feasibility studies (s.182)
Railways under Special Act (s.183)
Entry for survey, inspection (s.184)
Entry for temporary occupation (s.185)
Entry for urgent commencement of work (s.186)
- 3) a. No
- b. No

PTA

- 1) The PTA may exercise powers of entry under division 4 of Part 3 of the Rail Freight System Act 2000 to do all things necessary to protect corridor land. There are three types of entry permitted:
- a. Entry with the consent of the owner or occupier of the land, or where a notice of entry complying with Section 54 of the Act is given. The notice must give at least 24 hours notice of proposed entry.
- b. Entry under warrant granted by a Justice, where a Justice is satisfied that entry is reasonably required but:
- entry is refused, opposed or rejected
- entry cannot be obtained
- notice of entry under Section 54 cannot be given without unreasonable difficulty or unreasonably delayed entry.
- c. Entry in an emergency. An emergency exists where obtaining entry under the other two categories is impractical or unreasonable because of the imminent risk of injury or illness to any person, a natural or other disaster or emergency or any other prescribed occurrence. There is currently no such "prescribed occurrence" in the regulations relating to this act.

The power to enter described in the Rail Freight System Act 2000 does not distinguish between private residential or other private land.

Armadale Redevelopment Authority

- 1) a. N/A

- b. Clause 5.2 of the Armadale Redevelopment Scheme 2003
- 2) Entry provided for under Clause 2.5 may be exercised at reasonable times for the purpose of ascertaining whether the provisions of the Armadale Redevelopment Scheme 2003 are being or have been observed.
- 3) There is no difference with regard to entry provided under Section 5.2 between a) private residential property and b) other private property.

The East Perth and Subiaco Redevelopment Authorities

- 1 The East Perth and Subiaco Redevelopment Authorities have power, under their respective Acts, to enter property within their respective redevelopment areas to ensure that any development on the property complies with their redevelopment schemes.
- 2 EPRA or SRA may enter property in the following circumstances:
. to study the feasibility of a proposed public work;
. to remove any unlawful development; and
. to ascertain whether the provisions of the EPRA or SRA Schemes are being observed.
- 3 The rights of entry of EPRA and SRA make no distinction between ‘private residential property’ and ‘other private property’.

Midland Redevelopment Authority

- 1) Midland Redevelopment Authority – Redevelopment Scheme, Midland Central, Part 1
Part 6, 6.2 Authorized Entry.
a. Negative
b. Affirmative

Albany Port Authority

- 1) N/A
2) N/A
3) N/A

(Broome Port Authority)

- (1) (a) n/a
(b) Port Authorities Act 1999 S107.
- (2) a harbourmaster may remove from the waters of the port, destroy, or sink any vessel or dangerous thing the owner of which cannot after reasonable enquiries, be ascertained or found. Exercising this power may require entry to private property in the form of ships, boats or other vessels or things that might obstruct or make unsafe the waters of a port.
(a) the power does not relate to residential property.
(b) the power relates to private property in the form of ships, boats or other vessels or things that might obstruct or make unsafe the waters of a port.

Bunbury Port Authority

- 1) N/A
2) N/A
3) N/A

Dampier Port Authority

- 1) N/A
2) N/A
3) N/A

Esperance Port Authority

- 1) N/A
2) N/A
3) N/A

Fremantle Port Authority

- 1) N/A
- 2) N/A
- 3) N/A

Geraldton Port Authority

- 1) N/A
- 2) N/A
- 3) N/A

Port Hedland Port Authority

- 1) N/A
- 2) N/A
- 3) N/A