

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

2041. Mr M.G. House to the Minister for State Development

- (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?

Mr C.M. BROWN replied:

I am advised:

Of the 93 Acts within the portfolio of the Minister for State Development, only a small number bestow a right to access residential private property.

Explosives and Dangerous Goods Act 1961

- (1) (a)-(b) Section 12 empowers an inspector to enter, inspect and examine any premises at any time where he has reason to suspect that dangerous goods or explosives may be found. However, unless he suspects imminent danger to the public or any person, he may not enter a dwelling except by authority of a search warrant issued by a justice.
- (2) Entry for inspection may be exercised at any time, subject to the requirement for a warrant if a residential dwelling. There are strict and detailed provisions in the Act for the issue of a warrant requiring a Justice of the Peace to be convinced of its justification.
- (3) (a)-(b) Owners and occupiers of residential property are generally protected from entry without warrant. Access to other private property for inspection purposes requires no warrant.

Mines Safety and Inspection Act 1994

- 1(a)-(b) Section 21 empowers an inspector to enter, inspect and examine any mine at any time for compliance with the Act, without warrant. It is silent with regard to residential property on a mine site.
- (2) Such entry may be exercised at any time without notice. In practice however notice is provided to allow the operator to fulfil a duty of care to ensure safety of any person on the site.
- (3) The Act appears silent on residential property. Access to mines on private property is unfettered except where excavation is carried out by and for the owner of the property itself, which is not subject to the Act.

Mining Act 1978

- (1) (a) Section 141 provides for the issue of a warrant for recovery of possession of a mining tenement and for a bailiff appointed under the Local Courts Act 1904 or any police officer to eject persons from a mining tenement on any land and take possession of that mining tenement.

The Mining Act bestows the right for a person to prospect for minerals or mark out mining tenements. However no person, other than the owner/occupier may enter private land for such purposes without consent of the owner, an entry permit issued by the Warden, or a granted tenement (s30). Tenements granted over private land exclude certain areas of improvement, including residences, unless written consent has been obtained from the owner and occupier (s29).
- (b) Section 115 allows the Director, Geological Survey or any other officer of the Department working under the Director's instructions to enter any land

for the purposes of conducting geological, geophysical or geochemical surveys.

For the purpose of determining whether any royalties are payable and for verification of those royalties, Section 109(A)(3) of the Mining Act 1978 provides for an officer of the Department or a person authorised by the Minister, to, at any reasonable time, without warrant, exercise the powers conferred by Section 109(A) (4).

Regulation 120G empowers inspectors to enter upon any mine site to determine the effect of the operations upon the environment.

- (2) A warrant may be issued pursuant to section 141 where a Warden's Court has made an order relating to ownership of a mining tenement, however to date this provision has not been used.

Officers of the Geological Survey Division of the Department may enter any land for the purpose of conducting geological sampling on behalf of the State and is a mechanism to enhance knowledge of the State's mineral potential. Before entry onto land, section 115 provides for notice to be given to any owner or occupier, where practicable.

The powers conferred under Section 109(A)(4) include the power to enter upon any land where mining operations are carried out and into any premises situated on that land used for the purpose of preparing accounting or other records relating to mining operations conducted on that land.

- (3) (a)-(b) No difference.

The Aluminium Refinery (Worsley) Agreement Act adopts the private land provisions of the Mining Act 1978.

Commonwealth Petroleum (Submerged Lands) Act 1967;  
State Petroleum (Submerged Lands) Act 1982;  
Petroleum Act 1967;  
Petroleum Pipelines Act 1969.

- (1) (a) Section 140F of the Commonwealth Petroleum (Submerged Lands) Act 1967 provides for a warrant to be issued by a magistrate for a police officer or member of the defence forces to access a vessel.

Section 16 of the Petroleum Act requires that written consent of a private land owner be obtained before exploring for or developing petroleum. This is restricted to private land parcels of less than 2000sqm; however "operations" may not commence until compensation payable under s11 is dealt with. Effectively then, access to private land for petroleum activities requires consent.

- (b) The petroleum legislation – Commonwealth Petroleum (Submerged Lands) Act 1967, State Petroleum (Submerged Lands) Act 1982; Petroleum Act 1967; Petroleum Pipelines Act 1969; enables its Inspectors to enter any structure, ship, aircraft or building used in connection with upstream petroleum operations.

- (2) In the case of Section 140F of the Commonwealth Petroleum (Submerged Lands Act) 1967, access to a vessel can be exercised if a vessel enters or is about to enter a safety zone around a petroleum installation or an area to be avoided.

Access by Inspectors is confined to reasonable times and also enables the testing of equipment used in connection with petroleum operations and the inspection/copying of documents.

- (3) (a)-(b) No difference.