

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

2037. Mr M.G. House to the Minister for Consumer and Employment Protection; Indigenous Affairs; Minister Assisting the Minister for Public Sector Management

- (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 J.C. KOBELKE replied:

Department of Consumer and Employment Protection

- (1)
 - (a) Real Estate and Business Agents Act (1978)
Settlement Agents Act (1981)
Finance Brokers Control Act (1975)
Consumer Affairs Act (1971)
Petroleum Products Pricing Act (1983)
Travel Agents Act (1985) – note – warrant required for residential property
 - (b) Industrial Relations Act 1979
Occupational Safety and Health Act 1984 – suspected to be a workplace
Travel Agents Act (1985) – note – for business premises only
Employment Agents Act (1976)
Water Services Coordination Act (1995)
Painters' Registration Act (1961)
Builders Registration Act (1939)
Retail Trading Hours Act (1987)
Weights and Measures Act (1915)
Wheat Products (Prices Fixation) Act (1938)

Under section 98(3)(a) of the Industrial Relations Act 1979, if there are reasonable grounds to suspect that private property is being used as an industrial location (as described in the section), as in the case of a home business, an Industrial Inspector may enter that property for the purposes of ascertaining whether or not the provisions of the Act or any awards or orders in force are being or have been observed.

The Occupational Safety and Health Act 1984 section 43, sets out the powers of WorkSafe Inspectors to enter workplaces. "Workplace" means a place, whether or not in an aircraft, ship, vehicle, building, or other structure, where employees or self-employed persons work or are likely to be in the course of their work. A warrant is not required under the Act. An authorised WorkSafe Inspector may enter a workplace for the purposes of the Act without a warrant, but they must take all reasonable steps to notify the employer of their presence.

Under the Travel Agents Act (1985) a warrant is not required where the premises are business premises, or where the inspector has reasonable grounds for believing that records relating to the carrying on by a person of the business of a travel agent are being kept. Where the premises are residential premises the inspector must obtain a search warrant unless either he or she has the consent of the occupier of the premises or the business of a travel agent is carried on in those premises.

For the Employment Agents Act (1976), section 46(3) provides that an inspector may, at any reasonable hour by day or night, enter any place that he has reasonable cause to believe is used as or intended to be used as or was at any time within the preceding 3 months used as, the office of an employment agent and examine that place and any documents or records found therein.

Under the Water Services Coordination Act (1995), pursuant to section 49, an inspector may enter without notice on or into any land, premises or thing where he or she has reason to believe that any

water services of the kind to which his or her powers relate are or may be provided, or any water services works used for the provision of any of those water services are or may be situated.

Under the Painters' Registration Act (1961) and the Builders Registration Act (1939), provision is made for a Board member or person appointed by the Board to enter any premises and inspect any painting or building work respectively.

It is considered that section 28 of the Retail Trading Hours Act (1987) and sections 36 and 37 of the Weights and Measures Act (1915) generally apply to business premises.

Section 18(2) of the Wheat Products (Prices Fixation) Act (1938) provides for a relevant officer at any reasonable time to enter any premises in which he believes any relevant documents are kept, to inspect those documents.

- (2) Under section 98(3)(a) of the Industrial Relations Act 1979, if there are reasonable grounds to suspect that private property is being used as an industrial location (as described in the section), an Industrial Inspector may enter that property for the purposes of ascertaining whether or not the provisions of the Act or any awards or orders in force are being or have been observed.

Under the section 43 of the Occupational Safety and Health Act 1984, an inspector may enter, inspect and examine any workplace at all reasonable times of the day or night or at any other time that the performance of his functions under the Act requires such entry. The circumstances in which entry of the workplace can occur are that the entry must be for the purposes of the Act.

Where a warrant is required, the relevant circumstances are that the Justice of the Peace or the Magistrate issuing the warrant is satisfied that entry to the premises is sought in good faith for the purpose of carrying out an investigation or enquiry under the relevant Act.

Generally the warrant can only be exercised within ordinary business hours.

- (3) (a)&(b) The Travel Agents Act makes a distinction – refer Question (2) – but for the other statutes in the portfolio, there is no distinction made between a private residential property and other private property.

Department of Indigenous Affairs

- (1) (a) Not applicable.
- (b) Section 16 of the Aboriginal Heritage Act 1972 (AHA) enables the Registrar of Aboriginal Sites (appointed under section 37 of the AHA), on the advice of the Aboriginal Cultural Material Committee, to authorise the entry upon and excavation of an Aboriginal site. This power is not restricted in its application to any particular type of land tenure (and the Act is generally interpreted as applying to all type of land tenure, except where it is otherwise expressly stated).

Section 51 of the AHA enables officers of the department assisting in the administration of the AHA, and any Honorary Wardens appointed under section 50 of the AHA, to enter certain premises under certain circumstances to carry out inspections (see below for detail). Regulation 8 of the Aboriginal Heritage Regulations 1974 (AHR) also gives the Minister, the Registrar of Aboriginal Sites, any officer of the Department and any Honorary Warden the power to remove persons from any Aboriginal site or Protected Area in certain circumstances.

Section 4 of the Aboriginal Affairs Planning Authority Act Regulations 1972 (AAPA Regulations) provides that any officer of the Aboriginal Affairs Planning Authority can, in the exercise of his powers and duties, enter on any land or premises where there are persons of Aboriginal descent or where he has reasonable cause to suspect that they may be found.

Section 31 of the Aboriginal Affairs Planning Authority Act 1972 (AAPA Act) provides that a person who enters or remains on land to which Part III of the Act applies is guilty of an offence unless that person falls within one or more of the categories of person enumerated in the section. Those categories include persons authorised under the AAPA Regulations and persons lawfully exercising functions under the AAPA Act or otherwise acting in pursuance of a duty imposed by law. In this way section 31 does not create a right of entry onto land, but exempts certain persons from what would otherwise be a trespass action against them.

Section 7(2)(a) of the Aboriginal Communities Act 1972 (ACA) provides that Aboriginal community councils instituting by-laws over their community lands can include in their by-laws provisions empowering members of the police force to perform certain functions in

respect of those by-laws. The performance of those functions may require the police to enter and remain on community lands from time to time.

- (2) The power under section 16 of the AHA is exercisable by the Registrar of Aboriginal sites on the advice of the Aboriginal Cultural Material Committee.

The power under section 51 of the AHA enables officers of the Department and Honorary Wardens, together with any person that is considered competent to do so, to enter any premises, other than premises used exclusively as a private dwelling, and examine any Aboriginal site or any place or object that there are reasonable grounds for believing to have been traditionally or currently of sacred, ritual or ceremonial significance to persons of Aboriginal descent and make such examination and inquiry and tests and ask such questions and request such information as is considered necessary or desirable to the extent required for the purposes of the Act.

The power under Regulation 8 of the AHA is exercisable upon the happening of any of the events specified in the regulation, including where a person is behaving in a disorderly manner, where a person appears to be intoxicated, where a person appears to be using the land for an unlawful purpose or a purpose contrary to the objects of the AHA and where, in the case of a person who has committed a breach of the regulations, the continued presence of the person may lead to a further breach of the regulations.

An officer of the Aboriginal Affairs Planning Authority can enter private property under Regulation 4 of the AAPA Regulations in the exercise of his powers and functions (which are determined by the Commissioner for Aboriginal Planning).

Members of the police force can enter community lands under the ACA to the extent necessary to perform any functions and duties they may have in relation to those community lands under the relevant by-laws.

- (3) (a)&(b) Section 51 of the AHA makes clear that the power cannot be used in relation to premises used exclusively as a private dwelling.

The powers exercised by members of the police force under the ACA can only be exercised on 'community lands' (as defined by the Governor). Community lands may include private and private residential areas.

The other powers outlined above arguably apply irrespective of underlying land tenure, although there may be situations in which the power conflicts with another legal power or right. Which right prevails will depend on the particular circumstances of the case.

WorkCover WA

- (1) (a)&(b) An inspector, who is authorised under the Workers' Compensation and Rehabilitation Act, 1981 (the Act), does not require a warrant to enter a private property.

Under section 175B of the Act, an inspector may, for the purposes of this Act "at all reasonable times of the day or night, enter, inspect, and examine any place where it is suspected that workers may be employed or books, accounts, documents or records required to be inspected may be held."

In addition, an inspector may "interview, either in private or otherwise, as the inspector considers appropriate, any person who the inspector has reasonable grounds to believe is able to provide information that may assist the inspector to perform a function under the Act."

- (2) As indicated above, an inspector may enter a private property in the performance of a function under the Act. It should be noted a person who "obstructs or interferes with the performance by an inspector of any of the inspector's functions under the Act, commits an offence."
- (3) (a)&(b) There is no difference with regard to such entry between a private residential property and other private property.

Construction Industry Long Service Leave Payments Board

- (1) (a)&(b) The Construction Industry Portable Paid Long Service Leave Act 1985 (the Act) allows Inspectors appointed pursuant to section 44 of the Act to, amongst other things, enter private property at any reasonable time without a warrant.
- (2) Inspectors exercise their powers to ascertain any liability an employer or any entitlement an employee in the construction industry may have under the Act.

(3) (a)&(b) Entry into private property occurs at the business address of the employer.

Western Australian Industrial Relations Commission

(1) (a)&(b) Not applicable.

(2) Not applicable.

(3) (a)&(b) Not applicable.