

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

2039. Mr M.G. House to the Minister for Police and Emergency Services; Justice; Community Safety
- (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?

Mrs M.H. ROBERTS replied:

Western Australia Police Service

The Western Australia Police Service advise:

- (1) Police have wide ranging powers of entry under both common and statute law. Entry powers under statute law administered by my Portfolio include the followings Acts:
- Firearms Act 1973
- Entry without warrant to any premises to seize a firearm where the officer believes there is a risk of harm or injury to any person or the possessor is not considered at that time to be fit and proper.
 - Entry with warrant to any place in the investigation of an offence involving a firearm.
- Misuse of Drugs Act 1981
- Entry without warrant to premises of authorised manufacturer, cultivator seller or supplier of prohibited drugs or plants to inspect records etc.
 - Entry with warrant to any premises or place in the investigation of offences against the Act.
- National Crime Authority (State Provisions) Act 1985
- Entry with warrant to any premises or place in the investigation of criminal activity covered by the Act.
- Pawnbrokers and Second-hand Dealers Act 1994
- Entry without warrant to any premises to which licence applies to inspect goods and records.
- Police Act 1892
- Entry without warrant to vessels, places of entertainment, licensed premises to investigate offences and premises and property of charged suspected felon.
 - Entry with warrant to any place to search for stolen goods and to disorderly house, house of ill-fame, unlicensed liquor seller etc.
- Prostitution Act 2000
- Entry without warrant to prostitution business in relation to prostitution offences involving a child or coercion.
 - Entry with warrant to any place for evidence of offence against the Act.
- Surveillance Devices Act 1998
- Entry with warrant to any place install, maintain or retrieve a surveillance device
- Weapons Act 1999
- Entry with warrant to any place to obtain evidence of an offence against the Act.
- (2) The circumstances under which powers of entry may be exercised by police officers are extensive.
- (3) The statute powers of entry under these Acts do not distinguish between private residential property and other private property.

Fire and Emergency Services Authority

The Fire and Emergency Services Authority advise:

- (1)
 - (a) Nil.
 - (b) Fire and Emergency Services Authority of Western Australia Act 1998
Fire Brigades Act 1942
Bush Fires Act 1954
- (2) Fire and Emergency Services Authority of Western Australia Act 1998
 - undertaking, coordinating, managing and providing practical assistance to activities and projects relating to emergency services;
 - protecting and saving life and property endangered by a natural disaster;
 - rendering safe the site of a natural disaster;
 - carrying out a search and rescue operation;
 - carrying out operations to assist any other agency, organisation or body that provides emergency services

Fire Brigades Act -

 - preventing and extinguishing fires and protecting and saving life and property from fire;
 - protecting and saving life and property endangered by hazardous materials incidents – confining and ending such incidents, and rendering the site of such an incident safe;
 - undertaking rescue operations;
 - at all reasonable times, has free access to any premises – to assess whether or not there exists any potential danger to life or property from fire or hazardous materials;
 - at all reasonable times has free access to all premises used or intended for purposes of public entertainment or of public discourse – for the purpose of ascertaining whether the laws and regulations pertaining to the prevention of and escape from fire or hazardous material incidents are being observed;
 - investigating the origin of a fire or hazardous material incident or the cause of an accident or incident which required a rescue operation;

Bush Fires Act

 - examining a fire which he/she has reason to believe has been lit, or maintained, or used in contravention of the Act;
 - examining a fire which he/she believes is not under proper control;
 - examining fire-breaks on the land;
 - examining anything which he/she considers to be a fire hazard existing on the land;
 - investigating the cause and origin of a fire which has been burning on the land;
 - inspecting fire precaution measures taken on the land;
 - investigating and examining the equipment of a bush fire brigade;
 - extinguishing bush fires;
 - carrying out the requirements of a fire-break or hazard reduction notice;
 - causing fire-breaks to be ploughed or cleared on land, and taking such other appropriate measures on the land as he/she may deem necessary to control or extinguish a bush fire or to prevent the spread or extension of the fire; and
 - taking and using water (other than that for use at a school or the domestic supply of an occupier contained in a tank at his/her dwelling house) and other fire extinguishing material from any source whatever on land.
- (3) The empowerment provided in the legislation makes no distinction between private residential property and other private property.

Office of Road Safety

The Office of Road Safety advise:

(1) Nil

(2)-(3) Not applicable

Office of Crime Prevention

The Office of Crime Prevention advise:

(1) Nil

(2)-(3) Not applicable

Department of Justice

The Department of Justice advise:

(1a-b) On basis that “private property” includes all of the grounds and out buildings, but not the dwelling, which is accorded special status, the following statutes allow officers of the department to enter private property with a warrant:

Supreme Court Act 1935 (WA)

District Court of Western Australia Act 1969 (WA)

Local Courts Act 1904 (WA)

(2) For the service and execution of court processes.

(3) No, however a private dwelling has a special status.

Office of the Inspector of Custodial Services

The Office of the Inspector of Custodial Services advise:

(1a-b) Section 86 of the Court Security and Custodial Services Act 1999 gives the Inspector and any person authorised by the Inspector free and unfettered access to a place, person, vehicle or document referred to in subsection (2). No warrant is required.

(2) Such entry would be restricted to a vehicle in which a person in custody is being transported.

(3a-b) Under subsection (2) the Inspector or other authorised person does not have access to a private residential property, and under section 86 (2)(d) has access to a vehicle, and (2)(e) to access to a vehicle with a person in custody in it.