

**VICTORIAN PARLIAMENT LAW REFORM
COMMITTEE**



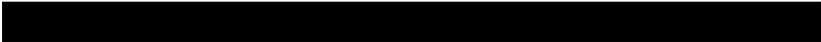
**The Powers of Entry, Search,
Seizure and Questioning by
Authorised Persons**

DISCUSSION PAPER

ISSUED FOR PUBLIC DISCUSSION AND COMMENT

DISCUSSION PAPER

OCTOBER 2001



**THE POWERS OF ENTRY,
SEARCH, SEIZURE AND
QUESTIONING BY
AUTHORISED PERSONS**



**VICTORIAN PARLIAMENT LAW
REFORM COMMITTEE**

PARLIAMENT OF VICTORIA



COMMENTS AND SUBMISSIONS INVITED

THE POWERS OF ENTRY, SEARCH AND SEIZURE AND QUESTIONING BY AUTHORISED PERSONS

How to make comments and submissions

You are invited to make comments and submissions on issues relevant to the Inquiry into the Powers of Entry, Search, Seizure and Questioning by Authorised Persons, including but not limited to the issues raised in this Discussion Paper.

Written comments and submissions should be sent to—

The Executive Officer
Victorian Parliament Law Reform Committee
Level 8, 35 Spring Street
MELBOURNE 3000

Phone: (03) 9651 3644

Fax: (03) 9651 3674

Email: VPLRC@parliament.vic.gov.au

Closing date—30 November 2001

Anyone can make a submission or comment. It is not necessary to have legal or any other special qualifications. The Committee is keen to hear from all those who have something to say about the powers of entry, search, seizure and questioning by authorised officers.

The Committee notes however that its terms of reference do not include police powers unless a police officer is acting as an authorised officer under legislation that also gives the power to inspectors or other authorised persons.

Submissions by email are encouraged. A separate signed authentication should be forwarded to the Committee. Hardcopy submissions should be accompanied by an electronic disk version if possible.

The Committee will also hold public hearings at which oral submissions and evidence can be given. The dates of public hearings will be advertised in the *Age* newspaper and on our website.

Confidentiality—All submissions are treated as public documents, unless confidentiality is requested. It is the intention of the Committee to place submissions on its webpage.

FUNCTIONS OF THE COMMITTEE

Parliamentary Committees Act 1968

- 4E.** The functions of the Law Reform Committee are—
- (a) to inquire into, consider and report to the Parliament where required or permitted so to do by or under this Act, on any proposal, matter or thing concerned with legal, constitutional or Parliamentary reform or with the administration of justice but excluding any proposal, matter or thing concerned with the joint standing orders of the Parliament or the standing orders of a House of the Parliament or the rules of practice of a House of the Parliament;
 - (b) to examine, report and make recommendations to the Parliament in respect of any proposal or matter relating to law reform in Victoria where required so to do by or under this Act, in accordance with the terms of reference under which the proposal or matter is referred to the Committee.

TERMS OF REFERENCE

Parliamentary Committees Act 1968

TERMS OF REFERENCE FOR AN INQUIRY INTO THE POWERS OF ENTRY, SEARCH, SEIZURE AND QUESTIONING BY AUTHORISED PERSONS

The Governor in Council, acting under section 4F(1)(a)(ii) and 4F(3) of the **Parliamentary Committees Act 1968** and on the recommendation of the Attorney-General, by this Order requires the Law Reform Committee to inquire into, consider and report to the Parliament on the following matters:

1. The purpose, effectiveness, fairness and consistency of provisions in Victorian legislation dealing with the exercise of powers including:
 - the power to enter premises or vehicles;
 - the power to search premises or vehicles;
 - the power to seize any thing;
 - the power to question any person or to require a person to provide any documents (and the extent to which that person may rely upon the privilege against self-incrimination)-

by authorised persons (including members of Victoria Police where those members are acting as authorised persons) for the purpose of monitoring compliance with the law or for investigating actual or suspected breaches of the law, having regard to the policy objectives of the relevant legislation.

2. Whether there should be a greater degree of consistency in the future development of such powers in Victoria, having regard to different legislative models (including criminal laws of general application, licensing provisions, legislation designed to protect public health and safety and the environment and emergency powers) and to

the need to match powers with the risk and gravity of the offence to which the powers are directed.

In conducting the Inquiry the Committee is to have regard to:

- a. The Senate Standing Committee for the Scrutiny of Bills Fourth Report of 1999 Entry and Search Powers in Commonwealth Legislation 6 April 2000.
- b. Such other legislation, case law, reports and materials as are relevant to the Inquiry.
- c. The experiences of competent authorities administering legislation containing powers of entry, search, seizure, and the ability to ask questions or require the provision of information.
- d. Complaints data relating to the use of such powers (for instance, data held by the Ombudsman, Victoria Police or other government agencies)

The Committee is requested to make its final report to the Parliament by the first day of the Autumn 2002 Parliamentary sittings.

Dated 18 April 2001

Responsible Minister:

STEVE BRACKS MP

Premier

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Mr. Telmo Languiller, MLA
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Powers of Entry, Search, Seizure and Questioning

by Authorised Persons

A Discussion Paper

Introduction

The Victorian Parliament Law Reform Committee has been asked to consider a range of powers given to authorised officers by a large number of Victorian Acts. The Committee will consider the powers of entry, search, seizure and questioning and the right to require the production of documents. To varying degrees these powers impinge upon individuals' rights to privacy, the integrity of their person and the possession of their property and chattels. The need for a certain number of such powers is generally accepted as a necessary part of community life. They are justified on the basis of the need to regulate certain activities in our community for the benefit of the community as a whole.

Of primary importance to the Committee's inquiry will be consideration of whether the extent of powers granted can be justified by the risk and gravity of the behaviour sought to be prevented. This presents a difficult task of weighing the rights of individuals against the rights of the larger community.

In practical terms this task will be undertaken by the investigation and identification of the existing range of such powers, and the consideration of their purpose, effectiveness and fairness. The Committee will also consider the degree of

consistency of powers granted to the various authorised persons and whether increased consistency across agencies would be a desirable outcome.

In formulating its recommendations the Committee will be mindful of the likely costs associated with different regulatory regimes and the need to consider the varying resources available to the different agencies involved in undertaking regulatory enforcement.

The inquiry concerns the powers of authorised persons, who are commonly referred to as inspectors but go by a variety of titles under different pieces of legislation. The inquiry is not an investigation of police powers but will include legislative provisions which allow either an authorised officer or a police officer to exercise one of the powers under consideration. Those powers exercisable only by police officers will not be included.

In this Discussion Paper the powers will be considered in two separate groups. Firstly the paper will consider the powers of entry, search and seizure and secondly the power to question and to require the production of documents.

Approach

This Discussion Paper will provide an introduction to the issues and a basis for the development of submissions to our inquiry.

The terms of reference specifically refer the Committee to the Report of the Commonwealth Senate Standing Committee for the Scrutiny of Bills Fourth Report of 1999 *Entry and Search Provisions in Commonwealth Legislation* (the Senate Committee Report).¹ This report canvasses many of the issues which our Committee will need to assess in relation to Victorian legislation. Because of the recent nature of the Senate Committee Report and its direct consideration of many of the same issues as the current inquiry this Discussion Paper will not repeat the discussion of those

¹ A copy of this report can be downloaded at www.apf.gov.au/senate/committee/scrutiny/index.htm

issues. The reader is referred to the Senate Committee Report for a detailed discussion of the background and principles relating to entry and search provisions.

A major recommendation of the Senate Committee Report was that all entry and search provisions in legislation should conform to a set of principles that should be enshrined in stand alone legislation². The principles developed by the Senate Committee are reproduced here with some additional commentary.

The Senate Committee considered only entry and search provisions and not the power to question and require the production of documents. The latter powers are discussed separately.

A list of Victorian Acts³ that contain entry, search, seizure and questioning provisions is provided at Appendix 1.

Submissions

The questions contained in this Discussion Paper are intended to assist those making submissions to the Committee. The Committee welcomes submissions on all relevant issues and the questions should not be seen as limiting the scope of submissions of interest to the Committee. Rather they are included to draw out some issues already identified by the Committee as relevant to its inquiry.

In particular the questions below are addressed to agencies who have existing statutory authority to undertake entry and search activities. The Committee seeks comment on the principles themselves and their relevance to various agencies and to the Victorian situation. In addition the Committee is seeking descriptive contributions which outline current practices as well as opinions as to their adequacy and the need for change.

² Recommendation 1, p81

³ The lists provided contain the results of our initial legislation searches. While detailed they may not contain every relevant provision. Further work on the lists will be undertaken during the course of the inquiry with the aim of producing a comprehensive list in the Final Report.

The Committee is also seeking submissions from individuals and groups who have been or are likely to be affected by the provisions, as well as members of the public and interested organisations such as public interest groups.

The Committee encourages submissions in electronic format which can be emailed to the Committee at VPLRC@parliament.vic.gov.au. All submissions received are public documents unless marked confidential. The Committee intends to place submissions on its website and electronic submission will facilitate this process.

The Committee also accepts written submissions in hardcopy which should be sent to the address below. Wherever possible the Committee asks that an electronic version also be provided.

*The Victorian Parliament Law Reform Committee
Level 8, 35 Spring St
Melbourne VIC 3000*

The closing date for submissions is 30 November 2001.

Any inquiries about making submissions should be addressed to the Executive Officer of the Committee, Ms Merrin Mason who can be contacted by email at merrin.mason@parliament.vic.gov.au or by phone on (03) 9651 3642.

Public Hearings

The Committee will be holding public hearings beginning in December 2001. The hearing dates will be advertised in the *Age* newspaper and on the Committee's website: www.parliament.vic.gov.au/lawreform. Interested persons and groups are encouraged to make appointments to give evidence to the Committee.

1. ENTRY, SEARCH AND SEIZURE

Any uninvited entry onto private premises is a potential trespass. This principle is established by a line of cases in English law usually cited as originating from the case of *Seymayne v Gresham* (1604) 77 ER 194 in which Lord Coke stated⁴:

..the house of everyone is to him as his castle and fortress, as well as for his defence against injury and violence, as for his repose.

A gradual erosion of this principle took place in part through the evolution of the common law but predominantly through statute resulting today in significant and numerous exceptions to the basic principle.⁵ The justifications for these erosions were, and still are, based on public interest considerations. Greater government involvement in people's lives and the increasing complexity of society have greatly increased the number and range of situations in which search and entry provisions can be justified.

Statutory provisions empowering entry, search and seizure in Victoria have been developed largely on an act by act basis relevant to a particular industry or situation. In consequence there is little consistency in the provisions. This situation, and concerns about the extent of power granted in some instances, has resulted in this reference.

As noted above, a similar review was undertaken by the Senate Standing Committee for the Scrutiny of Bills. The Senate Committee Report lists a number of principles to which the Committee considered all statutory provisions which authorise search and entry should conform. These principles are designed to guide law makers developing statutory provisions to promote consistency and to ensure that the competing interests of private rights and public interest are considered.

⁴ As quoted in Tronc, K et al *Search and Seizure in Australia and New Zealand*, p. 1.

⁵ For a good discussion of these developments see Tronc, K. et al *Search and Seizure in Australia and New Zealand*, pp4-8.

These principles are reproduced below. They are divided into those principles which consider:

- The grant of powers
- The authorisation to use the power granted
- The choice of people on whom the power is to be conferred
- The extent of the power granted
- The kinds of matters which attract the grant of power
- The manner in which the power is exercised
- The provision of information to occupiers of premises
- The protection of people carrying out the entry and search
- The issue of warrants by judicial officers

1. Principles governing the grant of powers of entry and search by Parliament *

- 1.1 *people have a fundamental right to their dignity, to their privacy, to the integrity of their person, to their reputation, to the security of their residence and any other premises, and to respect as a member of a civil society;*
- 1.2 *no person, group or body should intrude on these rights without good cause;*
- 1.3 *such intrusion is warranted only in specific circumstances where the public interest is objectively served and, even where warranted, no intrusion should take place without due process;*
- 1.4 *powers to enter and search are clearly intrusive, and those who seek such powers should demonstrate the need for them before they are granted, and must remain in a position to justify their retention;*
- 1.5 *when granting powers to enter and search, Parliament should do so expressly, and through primary, not subordinate, legislation;*
- 1.6 *a power to enter and search should be granted only where the matter in issue is of sufficient seriousness to justify its grant, but no greater power should be conferred than is necessary to achieve the result required;*
- 1.7 *in considering whether to grant a power to enter and search, Parliament should take into account the object to be achieved, the degree of intrusion involved, and the proportion between the two – in the light of that proportion, Parliament should decide whether or not to grant the power and, if the power is granted, Parliament should determine the conditions to apply to the grant and to the execution of the power in specific cases;*
- 1.8 *the criteria which individuals, groups and organisations must satisfy before they are allowed to enter and search premises should be consistent across all jurisdictions – rights should not be inviolate in one jurisdiction but capable of being violated in another;*
- 1.9 *consistency should be achieved by ensuring that all entry and search provisions conform to a set of guidelines or principles;*
- 1.10 *those who seek search and entry powers which do not accord with this set of guidelines must justify why they are seeking, and why they should retain, such broader powers.*

1.11 legislation conferring a power of entry and search should specify the powers exercisable by the officials carrying out the action. It should preserve the right of occupiers not to incriminate themselves and, where applicable, their right to the protection of legal professional privilege;

*Reproduced from the Commonwealth Senate Standing Committee for the Scrutiny of Bills Fourth Report of 1999 *Entry and Search Provisions in Commonwealth Legislation*

Beginning with a set of general statements of basic rights these principles then focus on the need to justify any abrogation of those rights. The principles require that the following questions be addressed:

Questions relating to the grant of power

- What is the public interest to be served by this power?
- Does this public interest justify both the existence of the power and the extent of the power granted? Is the power granted no greater than that which is necessary to achieve the result desired?
- Will there be an ongoing need for the power?
- Is it clear that powers granted for emergency situations are available only in clearly defined emergencies?
- Is there a requirement that due process accompanies the exercise of the power?
- Has the power been granted expressly through primary not subordinate legislation?
- Does the legislation place sufficient conditions on both the grant and the execution of the power with reference to specific conditions in which it can be used?
- Does the power preserve an occupier's right not to incriminate themselves? If not, is this justified and how?
- Does the power protect the right to legal professional privilege? If not, is this justified and how?
- If these rights are preserved, are there any situations in which it would be appropriate for them to be overridden by legislation?

The principles then address the issue of consistency between jurisdictions. Our inquiry is concerned with consistency within the Victorian jurisdiction where very little consistency between agencies appears to exist. The following questions need to be addressed in this regard:

Questions relating to Consistency

- Are the criteria that justify the existence and the use of powers consistent with, or similar to, those criteria supporting powers in legislation applying to other similar agencies?
- Is there a need to increase the consistency of powers within Victorian legislation? What advantages would greater consistency achieve?
- Would a set of principles or guidelines for Victorian legislation be desirable and effective in achieving greater consistency?
- Where legislation seeks to grant powers which do not comply with the guidelines (if these are developed), what procedure would be appropriate for seeking to justify broader powers?

2. Principles governing the authorisation of entry and search*

- 2.1 *legislation should authorise entry onto, and search of, premises only with the occupier's genuine and informed consent, or under warrant or equivalent statutory instrument, or by providing for a penalty determined by a court for failure to comply;*
- 2.2 *where legislation provides for entry and search with consent (or alternatively under a warrant), it should make clear that the consent must be a genuine and ongoing consent, and it should impose no penalty or disadvantage if an occupier fails to co-operate in the search, or subsequently withdraws consent – requiring an occupier to co-operate is inconsistent with the idea of consent;*
- 2.3 *where legislation provides for entry and search, but does not contemplate the possibility of entry by force under warrant, then a refusal of entry should attract a penalty imposed by a court;*
- 2.4 *the power to issue warrants to enter and search premises should only be conferred on judicial officers; justices of the peace should not have this power, nor should a Minister or departmental officer;*
- 2.5 *to ensure consistency with warrants issued by judicial officers, where a statute authorises an entry and search by permit or for monitoring purposes without prior judicial approval, it should provide for an appeal to a judicial officer;*
- 2.6 *circumstances may arise which may make it impractical to obtain a warrant before an effective entry and search can be made. Impracticality should be assessed in the context of current technology. If an official exercises a power to enter and search in circumstances of impracticality, that official must then, as soon as reasonably possible, justify that action to a judicial officer;*
- 2.7 *simply because a person has received financial assistance from the Commonwealth, or is liable to pay a levy under legislation, it does not follow that that person has thereby consented to entry and search by officials seeking to monitor compliance with the legislation, and no such implication should be drawn unless those subject to entry and search in these circumstances were informed in writing in plain English about those powers when receiving the assistance or on becoming liable to pay the levy.*

*Reproduced from the Commonwealth Senate Standing Committee for the Scrutiny of Bills Fourth Report of 1999 *Entry and Search Provisions in Commonwealth Legislation*

These principles relate to situations in which search and entry will be considered appropriate. In particular the principles address the issues of entry with consent, with a warrant and without a warrant or consent.

The principles identify the need to treat the issue of the imposition of a penalty for withholding consent differently depending on the other powers contained in the relevant legislation. In general the existence of such a penalty would be inconsistent with the notion of genuine consent. Where legislation allows that a warrant can be obtained to gain entry without consent, no penalty should apply for the withholding of consent as the alternative mechanism is available.

Where there is no power to obtain a warrant, the principles allow that a refusal of entry sanctioned by a penalty determined by a court would be appropriate.

Questions relating to the manner in which entry is gained

- Where entry is gained by consent, are there sufficient procedures and safeguards to ensure that such consent is genuine and informed?
- If consent is withdrawn during the course of the entry and search does the authorised person withdraw in recognition that the legal basis of her or his presence has been removed?
- Is there a penalty or disadvantage imposed for the failure of an occupier to consent or co-operate in a search? If so, is there also a power to gain entry under warrant?
- Where such a penalty is available, is it a requirement that it can be imposed only by a court?

The principles next address the issue of warrants. There are two distinct types of warrants issued. These are those issued for the purpose of gathering evidence in relation to an offence (suspected offence warrant), and those which allow for the monitoring of compliance with legislation (monitoring warrant).

In general, monitoring warrants contain less intrusive provisions and are therefore more readily granted than suspected offence warrants. For example they are unlikely to include the power to arrest. The justification for a monitoring warrant is likely to relate to circumstances which are general to the industry or group of people and therefore could be appropriately applied to a large number of warrants.

In contrast, a suspected offences warrant would need to be justified on the individual circumstances of each case. Each warrant application would require a stringent adherence to due process, particularly as a legal challenge to the methods of obtaining evidence could impact upon the subsequent success of a criminal prosecution.

Questions relating to warrants

- Where a power exists to grant a warrant to enter and search premises who is this power conferred on? If it is conferred on other than a judicial officer can this departure from the suggested principles be justified?
- If legislation does authorise entry and search by permit or for monitoring purposes without prior judicial approval, is there provision for an appeal to a judicial officer?
- Where impracticality prevents the obtaining of judicial authorisation for entry and seizure prior to this action being undertaken, is there a requirement that the action subsequently be justified to a judicial officer?
- In a situation in which a person receives financial assistance from the government or is liable under statute to pay a levy, is consent to entry and search in order to monitor compliance with the relevant legislation implied? If so, was the person clearly informed in writing of this implied consent at the time the assistance was given?

3. Principles governing the choice of people on whom the power is to be conferred*

- 3.1 a power to enter and search should be conferred only on those officials who are subject to obligations which make them accountable for the use and any misuse of the power;
- 3.2 a power to enter and search should be conferred only on those officials who are of sufficient maturity to exercise it and who have received appropriate training. Legislation should not confer a power to enter and search on a recipient categorised simply as 'a person' or as a member of a particular Department or organisation;
- 3.3 a power to enter and search should not be conferred on a particular recipient simply because it is the most economically or administratively advantageous option.

*Reproduced from the Commonwealth Senate Standing Committee for the Scrutiny of Bills Fourth Report of 1999 *Entry and Search Provisions in Commonwealth Legislation*

These principles address the issue of the capacity of the person exercising the power and the need for that person to be accountable and identifiable. A related issue is the public perception of legitimacy which attaches to the authorised person. In general the public is aware of and accepts the power of police officers to undertake entry and search activities with a warrant. The public is much less likely to be aware of the powers of various authorised persons and may less readily accept their assertion of similar rights.⁶

⁶ This issue is likely to have been a factor in the shooting of a RSPCA officers *Age 8/7/99 p/5* in Western Victoria in 1999. A landowner whose livestock was in poor condition shot and seriously injured a RSPCA officer who attended at his property see *Age 8/7/99* at p.5.

An important issue here is whether a complaints mechanism is available. A system exists for lodging complaints against police officers and it would be a legitimate public expectation that a similar option existed in relation to authorised officers.

Questions in relation to the person exercising the power

- In what ways are the persons who are given the power to enter and search accountable for their actions? How and to whom do they account for their actions?
- Is there a complaints procedure available? How well known and accessible is it? Are complaints investigated by a body or person independent from the agency?
- Do the authorised officers have the necessary training, experience and status to undertake their role effectively?
- Do authorised officers find it difficult to establish their legitimacy when exercising their powers?
- How is the issue of establishing legitimacy dealt with? Do the officers wear uniforms? Do they carry identification and how is this displayed?
- Is the power granted to an identifiable and limited number of officers? Is a specific officer or group of officers identified rather than a general grant of power given to all employees or members of departments or organisations?
- Have economic considerations played a significant role in determining who will be granted the power to enter and search? If so, has this affected the quality and success of entry and search activities? Has it impacted adversely on persons targeted by search and seizure?

4. Principles governing the extent of the power granted*

- 4.1 the extent of a power to enter and search will vary with the circumstances applicable, but the powers of entry and search given to the Australian Federal Police (AFP) under the *Crimes Act 1914* should be seen as a ‘high water mark’. Officials in other organisations might be given lesser powers, but greater powers should be conferred only in exceptional, specific and defined circumstances where Parliament is notified of the exercise of those powers and where those exercising those powers are subject to proper scrutiny;
- 4.2 officials should be given no greater power to enter and search premises than is necessary to carry out their duties.

*Reproduced from the Commonwealth Senate Standing Committee for the Scrutiny of Bills Fourth Report of 1999 *Entry and Search Provisions in Commonwealth Legislation*

These principles address the need for the power granted to be proportionate to the seriousness of the matter being addressed. In the Senate Committee Report the Commonwealth *Crimes Act* is identified as an appropriate upper limit on the extent of powers which should be granted. As a general proposition the Senate Committee concluded that the powers which related to civil matters should not exceed those granted for criminal matters.

Questions relating to proportionality

- Are the powers granted the least intrusive necessary to carry out the purposes of the legislation?
- Has past practice shown a need for the full extent of the powers granted?
- Have the powers been recently and regularly evaluated to determine their ongoing appropriateness, particularly in the light of technological change?
- Are the powers granted in excess of those available to police under the Victorian *Crimes Act*? If so can these instances of greater power be justified? Are the circumstances exceptional, specific and well defined?

5. Principles governing the kinds of matters which might attract the grant of the power*

- 5.1 the power to enter and search can properly be conferred in relation to both civil and criminal matters, but not as a matter of course, and only with provision for due process;
- 5.2 it is appropriate to grant a power of entry and search to assist in the investigation of serious crime where the investigation is genuine and has a reasonable chance of success;
- 5.3 it is appropriate to grant a power of entry and search to assist in the gathering of evidence to support a prosecution for a serious offence where the evidence sought is of significance and there is a reasonable chance that it will be found on the premises;
- 5.4 it is appropriate to grant a power of entry and search to determine whether a person has complied with legislation under which that person has accepted a commercial benefit, subject to being monitored by entry and search;
- 5.5 it is appropriate to grant a power of entry and search to determine whether a person has complied with legislation which imposes a commercial levy in relation to a serious matter, in circumstances where the legislation provides for this in specific terms;
- 5.6 it is appropriate to grant a power of entry and search to monitor civil matters which are serious, cannot otherwise be checked, and where the powers are used with maturity and are proportionate to the benefit gained.

*Reproduced from the Commonwealth Senate Standing Committee for the Scrutiny of Bills Fourth Report of 1999 *Entry and Search Provisions in Commonwealth Legislation*

These principles list a number of situations in which it is appropriate to grant powers of entry and search. The principles note the need for every grant of power to be made only with provision for due process.

Questions about appropriateness of the grant

- Is the power granted to further one of the identified matters listed above?
- Are there other ways in which the information could be obtained which would be less intrusive?
- Is the grant of power accompanied by provision for due process? What is this process?

6. Principles governing the manner in which the power to enter and search is exercised*

- 6.1 the power of entry and search should be carried out in a manner consistent with human dignity and property rights;
- 6.2 as a general rule, entry and search powers should be exercised during reasonable hours and on reasonable notice, unless this would defeat the legitimate purpose to be achieved by the exercise;
- 6.3 where entry and search is likely to involve force or physical interference with people and their property, it is preferable that this power be exercised only by, or with the assistance of, police officers. If such a power is to be granted to people other than police officers in such circumstances, their maturity, training and experience should be comparable to that of the AFP;
- 6.4 entry and search of premises, especially if carried out with the authority to use force, should be recorded on video or audio tape, unless this is impractical in all the circumstances.

*Reproduced from the Commonwealth Senate Standing Committee for the Scrutiny of Bills Fourth Report of 1999 *Entry and Search Provisions in Commonwealth Legislation*

These principles address the very important consideration of the manner in which powers are exercised. While recognising that practical considerations must be allowed for, the principles urge that in all possible cases entry and search be undertaken with the least disruption to the person involved. In addition it is maintained that where force or physical interference with people or property is involved police should undertake or at least assist in the activity.

Questions relating to how the power is exercised

- Are entry and search powers exercised with notice and during reasonable hours wherever possible?
- Where the exercise of power involves force or physical interference with people or property is it carried out by police or with police assistance? If not why not?
- Are the authorised officers carrying out these functions sufficiently trained and experienced?
- Are instances of entry and search without consent recorded on video or audio tape? If not, would it be possible and desirable to do so?

7. Principles governing the provision of information to occupiers*

- 7.1 the occupier of premises which have been entered and searched should be:
- given a copy of any relevant warrant;
 - informed in writing or, if that is impractical, informed orally, of his or her rights and responsibilities under the relevant legislation; and
 - given a genuine opportunity to have an independent third party, legal adviser or friend present throughout the search;
- 7.2 these requirements should be waived only where circumstances are critical, or where an official is threatened with violence, or where it is absolutely impractical to follow them;
- 7.3 legislation conferring a power to seize documents or other articles should provide:
- that any material seized be itemised;
 - that the occupier and any others affected be entitled to a copy of that itemised list and copies of any other business or personal records seized;
 - that the occupier and any others affected be entitled to receive copies of any video or audio tape recordings made, or transcripts of those recordings, within
7 days;
 - a procedure for dealing with disputed seizures; and
 - a time limit for the return of any material seized.

*Reproduced from the Commonwealth Senate Standing Committee for the Scrutiny of Bills Fourth Report of 1999 *Entry and Search Provisions in Commonwealth Legislation*

These principles list basic rights for occupiers subject to an entry without consent and the procedures which should be contained in legislation granting a power to seize documents or other objects.

Questions about informing occupiers of their rights

- Are the procedures listed above carried out routinely?
- If not, are they considered unnecessary?
- Are those procedures specifically required by legislation?
- If these procedures are not current practice, what would be the approximate cost in implementing them in terms of time, convenience and money?

8. Principles ensuring that people carrying out entry and search are protected*

8.1 where people enter and search premises under a power that accords with the principles set out in this Report, and exercise that power appropriately and in accordance with due process, they are entitled to do so without being subject to violence, harassment or ridicule, and are entitled to the protection of the law and to respect as persons carrying out their duty on behalf of the community.

*Reproduced from the Commonwealth Senate Standing Committee for the Scrutiny of Bills Fourth Report of 1999 *Entry and Search Provisions in Commonwealth Legislation*

The safety of authorised persons carrying out their activities is a very important consideration. The Senate Committee heard evidence of issues including physical assault, attacks by dogs and needle stick injuries.⁷

Questions about protection of authorised persons

- Is this principle complied with as a matter of practice?
- What are the experiences of authorised officers? Have there been instances of injury to authorised officers?
- What measures are taken to protect authorised officers?
- What legislative protection do they have?

⁷ Official Committee Hansard, p. 166

9. Principles relevant to judicial officers in the issue of warrants (as set out in *Tillett's case*)*

- 9.1 when approached to issue a warrant, a judicial officer should act as an independent authority, exercising his or her own judgment and not automatically accepting the informant's claim;
- 9.2 the judicial officer has a discretion which must be exercised judicially – to enable its proper exercise, the informant must put forward adequate sworn evidence;
- 9.3 the warrant itself must clearly state the findings of the judicial officer;
- 9.4 as a corollary of the power of seizure, a particular offence must be specified, both in the information and in the warrant – even where the statute simply uses the words “any offence” and makes no clear reference to a need to specify a particular offence;
- 9.5 a warrant must not authorise the seizure of things in general, or things which are related to offences in general, but only the seizure of things by reference to the specified offence;
- 9.6 a warrant may be struck down for going beyond the requirements of the occasion in the authority to search; and
- 9.7 the time for execution of a warrant must be strictly adhered to.

*Reproduced from the Commonwealth Senate Standing Committee for the Scrutiny of Bills Fourth Report of 1999 *Entry and Search Provisions in Commonwealth Legislation*

In relation to the issue of warrants the Senate Committee Report recommended that the Victorian procedure be followed in all jurisdictions⁸. This requires that after a warrant is executed it must be returned to the court of issue. The Senate Committee Report suggested that the return of warrants provided some measure of accountability. Much may depend on the extent to which returned warrants are subject to scrutiny and whether their return is in fact enforced. In addition, in Victoria only executed warrants are required to be returned so that no record of those which are not executed is kept.

⁸ Recommendation 9 p. 113.

Questions in relation to warrants

- How often are warrants sought for entry and search?
- Are warrants generally granted when requested?
- Are there any problems with the warrant system and how could these be addressed?

10. Other general principles*

10.1 each agency which exercises entry and search powers should maintain a centralised record of all occasions on which those powers are exercised, and should report annually to the Parliament on the exercise of those powers.

*Reproduced from the Commonwealth Senate Standing Committee for the Scrutiny of Bills Fourth Report of 1999 *Entry and Search Provisions in Commonwealth Legislation*

A requirement that agencies report their entry and search activities to Parliament is an effective way of ensuring that records are kept and that the process is open and available to public scrutiny and comment. When personal and property rights are potentially restricted by legislative provisions in the public interest it is arguable that the public should know of the extent to which such provisions are exercised.

Questions about record keeping

- Are such records kept and reported on?
- If not, would there be any problems associated with recording and reporting on their use?

In some instances answers to the questions posed above will be that the current legislative provisions are silent on these matter. In this case the question becomes one of whether there is a need for the relevant principles to be included in the legislation. It may be argued that their incorporation would be unworkable or undesirable for other reasons. Agencies will have their own systems for enforcement of regulatory regimes and for exercising the powers that they already have. It may be that internal guidelines and principles have provided good results and allowed the development of industry specific procedures. Conversely it may be the case that safeguards of individual rights have been overlooked by legislation developed at a time when less thought was given to such matters.

The Committee is interested to hear about current agency arrangements. The Committee's Final Report will seek to identify best practice which can inform future legislative developments and provide some guidance to the practical application of statutory provisions.

Other issues identified

The Committee wrote to a number of organisations advising them of the reference and inviting preliminary comments. Issues raised in responses which have not already been raised above are listed below.

- That the powers of authorised officers should not conflict with or hinder traditional criminal investigations.
- That existing powers are not sufficient to deal with contemporary electronic commercial practices.
- That some agencies have the power to enter, search and inspect but not the power to seize or copy documents. This makes it difficult to prepare a case for prosecution. In addition, where the copying of documents is allowed but not their seizure, this presents difficulties of proof in subsequent court proceedings as the copies have to be admitted as secondary evidence.
- That the need to retain seized objects as possible exhibits for a trial possibly years away can create practical problems and also inconvenience to owners of stolen goods.
- Searches of the person are particularly intrusive and generate a greater number of complaints than do other types of searches.
- That where minor offences are involved the high cost of making inspectors accountable to the court is not justified.
- That there are practical difficulties when search provisions limit searches to commercial premises as an investigation may easily be frustrated by the removal of documents to domestic premises.

2. THE POWER TO QUESTION AND TO REQUIRE THE PRODUCTION OF DOCUMENTS

The power to question any person or to require a person to provide any documents is the second part of this reference. This includes consideration of the extent to which a person may rely upon the privilege against self-incrimination.

Considerations of individual rights to privacy as against the public interest are as relevant to these powers as they are to those powers considered above. Hence similar questions arise as to:

- the justification for the existence of these powers;
- whether their exercise is sufficiently restricted;
- whether they are exercised in an appropriate way; and
- the application of due process to the use of the power.

The questions already listed above should be considered in relation to the power to question and to require the production of documents.

There are issues which are particular to the power to question and to require the production of documents. These will be discussed below and include:

- the privilege against self incrimination;
- the specific power to request a person's name and address; and
- issues relating to documents.

i) Privilege Against Self Incrimination

The privilege against self incrimination is a common law right which is usually exercised by the refusal to answer questions or to produce documents. It is to be distinguished from the right to remain silent which is a related but separate legal concept. The privilege is a basic common law right and not merely a rule of evidence. This means it is available generally and not only in a court room situation. It is available in administrative investigations as well as in judicial proceedings.⁹

⁹ Williams, D, *Investigations by Administrative Agencies*, the Law Book Company Limited, North Ryde NSW, 1987, p. 96.

The parameters of the privilege against self-incrimination can be described as follows:

...refusal must be in response to specific demands for information because a universal and absolute claim cannot be made to cover all inquiries¹⁰. Also an apprehension on the part of the person claiming the privilege is not enough. There must be reasonable grounds to support the belief that answers will incur a criminal penalty¹¹.

.....

The privilege against self incrimination does not prevent general access to property and to documents for the purposes of inspection and seizure¹², Therefore, it will not prevent the seizure of property, including documents, under authority of a search warrant. However the privilege will protect a person from any requirement to reveal the location of, or to identify, any seized documents, or their contents, that could be incriminating.¹³ Assessment of documents as appropriate to merit the privilege is open to the court.¹⁴¹⁵

This common law privilege can be modified or excluded by legislation and this is often done to facilitate investigative activities.

In the first part of this paper it was noted that the Senate Committee Report proposed as a general principle that provisions in Commonwealth criminal legislation in relation to powers of entry, search and seizure should represent the upper limit of powers available. Similarly it is useful to look at the provisions relating to criminal matters in Victorian legislation before considering the powers which authorised officers possess.

¹⁰ *National Crime Authority v S* (1991) 100 ALR 140.

¹¹ *Sorby v Commonwealth* (1983) 152 CLR 281.

¹² *BPA Industries v Black* (1987) 11 NSWLR 609.

¹³ *Controlled Consultants Pty Ltd v Commissioner for Corporate Affairs* (1985) 156 CLR 385.

¹⁴ *Korp v Egg & Egg Pulp Marketing Bd* [1964] VR 563.

¹⁵ The quote and references taken from Leaver, *A Investigating Crime; A Guide to the Powers of Agencies Involved in the Investigation of Crime*, pp107-108, 1997 LBC Information Services.

The Situation in Criminal Cases

The Victorian *Evidence Act 1958* specifically preserves the privilege in criminal cases in section 26:

Nothing herein contained shall render any person who in any criminal proceedings is charged with the commission of any indictable offence or any offence punishable on summary convictioncompellable to answer any question tending to criminate himself...

However the operation of section 29 limits this right:

No witness shall on the trial of any issue joined or of any matter or question or on any inquiry arising in any suit action or proceeding whether civil or criminal be permitted to refuse to answer any question which is relevant and material to the matter in issue on the ground that the answer may expose him to any penalty or forfeiture or may disgrace or criminate himself, unless the court or person having by law or by consent of parties authority to hear receive and examine evidence is of opinion that the answer will tend to subject such witness to punishment for treason or an indictable offence.¹⁶

In other words, the right is limited to situations during a trial in which the answer to a question is relevant and material to the matter in issue. In such a situation only answers which would tend to subject the person to punishment for treason or an indictable offence¹⁷ are subject to the privilege.

The Victorian *Crimes Act 1958* provides in section 464J that no provisions in its subdivision on custody and investigation affects the right of a person suspected of committing a criminal offence to refuse to answer questions.

¹⁶ *Evidence Act* s. 29.

¹⁷ See Glossary of Legal Terms.

Situation in relation to Authorised Officers

The position in relation to the privilege in legislation giving powers to authorised officers in Victoria varies. A number specifically protect the privilege¹⁸ while many others exclude the privilege.¹⁹ In this latter case, however, the legislation usually provides that where a claim of privilege is made prior to answering the questions or producing documents, evidence obtained is not admissible in evidence in subsequent criminal proceedings.²⁰

Some Acts distinguish between answers to questions and the production of documents. The *Public Lotteries Act 2000* allows a claim of privilege as a reasonable excuse for failing to answer questions but excludes the privilege in relation to the production of equipment or records.

In other Acts which contain requirements to answer questions or produce documents no specific mention is made of the privilege. This situation was considered in the case of *Sorby v Commonwealth* (1983) 46 ALR 237. In this case the court determined that such an important common law principle was abrogated neither merely by the existence of a statutory power to question nor by the existence of a penalty for failure to comply. The legislation in question contained a section providing that a failure to comply would not attract the penalty if there was a reasonable excuse for the non-compliance. Murphy J commented (at 260):

*Because the privilege is such an important human right, an intent to exclude or qualify the privilege will not be imputed to the legislature unless the intent is conveyed in unmistakable language.*²¹

¹⁸ For example *Children's Services Act 1996* s42; the *Gas Safety Act 1997* s102; *Introduction Agents Act 1997* s56.

¹⁹ For example *Trade Measurement Act 1995* s.66; *Fundraising Appeals Act 1998*; *Travel Agents Act 1986*.

²⁰ While most acts with this provision require that the claim of privilege be made before the question is answered, a small number do not impose this prerequisite.

²¹ As quoted in Williams D, *Investigations by Administrative Agencies* (above note 9): p 99.

Acts without direct reference to the privilege may contain the reasonable excuse clause as in the case above²² or may merely provide for a penalty for failure to comply.²³ While the absence of the reasonable excuse provision would tend to suggest the intention of the legislation is to exclude the privilege, it is unlikely that it would be sufficient to meet the standard articulated by Murphy J in the case above.

In general the legal situation is that, unless specifically removed, the privilege against self incrimination is retained.

A summary of the different approaches in different pieces of Victorian legislation is as follows:

- The privilege is specifically preserved in relation to both powers
- The privilege is retained for questions but abrogated for the production of documents (but documents cannot be used in criminal proceedings if privilege is raised)
- The privilege is abrogated for both questions and production of documents (but neither can be used in criminal proceedings if privilege is raised)
- There is no reference to privilege. Failure to comply will attract a penalty unless there is a reasonable excuse
- There is no reference to privilege. Failure to comply will attract a penalty.

Questions in relation to the privilege against self incrimination

- What is the reason for the approach taken in the legislation in question?
- Where the privilege is abrogated, what is the justification for this?
- Where the privilege is specifically retained, has this caused any difficulties in carrying out successful investigations or obtaining prosecutions?
- Where a distinction is made between questioning and the production of documents, what is the reason for this distinction? Is it appropriate?

²² For example the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992*.

²³ For example the *Archaeological and Aboriginal Relics Preservation Act 1972*.

ii) Request to Provide Name and Address

The request for a person to provide their name and address is a particular question which is dealt with specifically in legislation.

The Situation in Criminal Cases

Section 456AA of the *Crimes Act* allows a member of the police force to request a person's name and address where the police officer believes on reasonable grounds that the person has committed or is about to commit an offence or may be able to assist in the investigation of an indictable offence. It is an offence to fail to comply with this request. A reciprocal right under the section allows the person requested to give their name and address to request that the police officer provide his or her name, rank and place of duty. The same penalty is provided for failure to comply.

Situation in relation to Authorised Officers

This reciprocal right is contained in a number of pieces of legislation which give powers to authorised officers. For example the Transport Act 1983 allows an authorised officer to (s.218B (2)):

..request a person to state his or her name and address if the officer... believes on reasonable grounds that the person has committed or is about to commit an offence against this Act or the regulations.

The authorised officer making such a request must (s.218B(3)):

..inform the person of the grounds for his or her belief in sufficient detail to allow the person to understand the nature of the offence or suspected offence.

The person accosted then has the right to (s. 218B(5)):

..request the officer.. to state, orally or in writing, his or her name and place of duty and to produce his or her authority.

The penalty is the same for a refusal by either the authorised officer or the person questioned to comply with such a request.

In a number of cases the refusal of a request by an authorised officer to provide a name and address allows the officer to then detain or arrest a person. These associated powers are discussed below.

The power to request this information is based on the need to identify individuals. It is not a general power and is usually limited to a situation in which an authorised officer knows or suspects a person has committed an offence against the relevant act.

iii) Issues Relating to Documents

The information gathering powers of Victorian law enforcement agencies usually include powers to require persons to produce documents relevant to the investigation. In addition, seizure powers discussed in the first section of this Discussion Paper frequently allow authorised officers to seize such documents. Accordingly, as stated above, the principles outlined in the first section are also relevant to the power to seize or require the production of documents. However, there are a number of additional issues which arise in relation to the power to require the production of documents which will be discussed in this section.

Inconsistencies in the Powers

There are often wide variations between the various Acts on key issues relating to documents. One common point of difference is the rights afforded to those individuals who are subject to questioning or the request to hand over documents. For instance, some Acts contain provisions on how information obtained during the course of an investigation may be used.²⁴ Others are silent on this issue.²⁵ Similarly, several Acts contain provisions for the tendering of receipts and the return of seized documents;²⁶ others allow the seizure of documents without any such safeguards.²⁷

²⁴ For example: *Ombudsman Act 1973*, section 20.

²⁵ For example: *Meat Industry Act 1993*, section 72; *Pharmacists Act 1974*, section 20.

²⁶ For example: *Health Services Act 1988*, section 147(2).

²⁷ For example: *Meat Industry Act 1993*, section 72; *Pharmacists Act 1974*, section 20.

There are also inconsistencies within particular Acts. For example, some agencies have the right to enter, search and/or inspect but not the power to seize or copy documents.²⁸ Other Acts allow agencies to copy documents but not to seize them.²⁹

The Committee will investigate further such inconsistencies in its Final Report.

Questions in relation to inconsistencies in the powers to produce documents

- Does the legislation in question contain provisions as to how the documents can be used and returned? How are these provisions implemented in practice?
- If there are inconsistencies between the various powers (such as where there is a power to seize documents but not to copy them), how do these affect the investigation process?
- What principles should govern the seizure, inspection, copying, use and return of documents? Is it important that such principles be contained in the relevant legislation?

²⁸ For example: *Ombudsman Act 1973*, section 21; *Intellectually Disabled Persons' Services Act 1986*, section 57.

²⁹ For example: *Occupational Health and Safety Act 1985*, section 39(i).

Common law / Statutory limits on Power to seize or require the production of documents

There are a number of common law or statutory limits on the power of law enforcement agencies to seize documents. Some of these – such as the privilege against self-incrimination which we have already discussed – are relevant to the other powers discussed in this paper. Others, such as legal professional privilege, arise mainly in the context of the power to require the production of documents (although many may be relevant to questioning powers as well). For the purposes of this Discussion Paper it is not intended to provide a detailed or exhaustive review of all the potential limits on the power to seize or require production of documents. Rather we merely wish to flag issues for further research and discussion.

Legal Professional Privilege

The principle of legal professional privilege establishes that certain communications between lawyers and their clients are privileged from disclosure.³⁰ In general, privileged communications are those “confidential communications between solicitor and client made for the purpose of advice or for use in existing or anticipated litigation.”³¹

Like the privilege against self-incrimination referred to in an earlier section of this Discussion Paper, legal professional privilege is a basic common law right and not simply a rule of evidence. This means that lawyers and their clients can potentially rely on the privilege to resist producing documents in an investigation as well as

³⁰ G E Dal Pont: “*Lawyers’ Professional Responsibility in Australia and New Zealand*,” Second Edition, LBC Information Services p. 275.

³¹ *O’Reilly v Commissioners of State Bank of Victoria* (1983) 153 CLR at 22 per Mason J (quoted on page 275 of G E Dal Pont (cited above at note 30)).

during any subsequent trial.³² Importantly, it also means that the principle cannot be abrogated by a statutory provision unless Parliament clearly expresses an intention to do so.³³ However, there are indications in the case law that Courts may find that any legal professional privilege in the documents sought may be abrogated even when statutory provisions contain no express statement to this effect.³⁴

The law relating to the types of communications which are protected by the privilege is complex and will be reviewed more thoroughly in the Final Report. For the purposes of this Discussion Paper it is important to note the existence of this privilege as a potential “check” on the power of agencies to seize or require the production of documents. It is also important to be aware of the potential limits on the ability of lawyers and their clients to rely on the privilege. We refer to some of these limits below.

No protection at the time of entry and seizure in Victoria

In Victoria (unlike the other States), legal practitioners and their clients cannot generally rely on the privilege to resist the production of documents at the time of entry and search. Ian Freckleton summarises the Victorian position as follows:

“Under s 465 of the Crimes Act 1958 (Vic) and most other Victorian search and seizure powers ... documents which are subject to a claim for legal professional privilege can be seized but must be carried before a justice to be dealt with according to law. The difference in approach arises because under Victorian search and seizure powers anything seized must be brought before the justice

³² *Baker v Campbell* (1983) 153 CLR 52.

³³ Freckleton, Ian (editor): “Criminal law Investigation and procedure Victoria,” LBC Information Services, 2000, p. 2-5605.

³⁴ See *Corporate Affairs Commission (NSW) v Yuill* (1991) 4 ACSR 624 and discussion in Brett Bolton: “Compelling Production of Documents to the ASC” Queensland Law Society Journal, June 1995, pp 235-6. See, also more recently, the case of *ACCC v Daniels Corporation International Pty Ltd* [2001] FCA 244 and, in particular, the six general propositions developed by Wilcox J. We note that this decision is currently the subject of a special leave application to appeal to the High Court of Australia.

*without delay. It is at this time, rather than at the point of execution, that the claim for legal professional privilege must be dealt with. If there is any doubt as to the proper application of the law the justice must give the claimant the privilege or the police officer the opportunity to obtain a ruling from the Supreme Court before disposing of the documents ...*³⁵

Statutory provisions

In contrast to the privilege against self-incrimination, which is frequently referred to in Victorian legislation, legal professional privilege is only occasionally mentioned in Acts containing the power to seize documents. In cases where no mention of the privilege is made, the common law relating to privileged communications will apply.³⁶ However, some Acts do specifically refer to the privilege. Some simply state that legal professional privilege is available.³⁷ Others specify who is entitled to rely on the privilege (generally limited to legal practitioners) and define some of the limits of the privilege.³⁸

Questions in relation to legal professional privilege

- How are questions of legal professional privilege dealt with by the relevant agency?
- Is there a need for a specific definition or modification of the privilege within the particular Act?

³⁵ Freckelton, (cited above at note 33), p. 2-5605.

³⁶ See discussion in the introduction to this section.

³⁷ For example: section 88 of the Nurses Act 1993.

³⁸ For example where the practitioner must comply with the order to produce documents to the extent that he or she is able to without disclosing the privileged communications and where they must furnish in writing the name and address of the person to whom or by or on behalf of whom the communication was made and sufficient particulars to identify the document. See, for instance, section 37N of the Associations Incorporation Act 1981.

- Would it be appropriate to implement a unified approach to privilege issues across the various Acts?

The Right to Privacy

An important new potential limit on the power of authorised officers to seize documents is the Information Privacy Act 2000 passed on 30 November 2000 and which commenced on 1 September 2001. The new Act covers state government agencies and private contractors to the state government and sets out information privacy principles designed to protect the privacy of personal information subject to certain exceptions.³⁹ Thus, unless they fit within one of the specified exemptions, agencies will be required to comply with the principles for collecting, using and disclosing any personal information they seize in the course of their investigation.

The Victorian Law Reform Commission (VLRC) is currently conducting an inquiry into how privacy is protected under the current law and has produced an Information Paper on the subject. For this reason the Committee does not propose to summarise the law relating to privacy in this Discussion Paper. Instead we refer interested readers to Chapter Four of the VLRC Information Paper *Privacy Law: Options for Reform* which includes a section on the Information Privacy Act 2000.

While the privacy laws are not the subject of this inquiry, the Committee proposes to investigate how such laws impact upon the power to require the production of documents. This investigation will include an examination of the extent to which agencies have systems or guidelines in place to ensure compliance with the new legislation. For this reason, the Committee is seeking comments or submissions from agencies in relation to how personal information is protected within their organisation.

³⁹ VLRC Information Paper: "Privacy: Options for Reform:" p 23.

Questions in relation to privacy considerations

- What systems or guidelines (if any) are in place to ensure that authorised officers comply with the Privacy Information Act 2000?

Duty of confidentiality

The express or implied duty of confidentiality owed by a professional to a client is a further potential limit on the power of agencies to seize or require the production of documents. The doctrine is particularly relevant to lawyers and is therefore related to the principle of legal professional privilege. However, it can also apply to documents held by other professionals such as doctors and bankers.⁴⁰

In relation to lawyers, the professional rules in the majority of Australian jurisdictions contain a broad definition of the scope of the duty of confidence: in general, the duty applies to any matter which has been communicated to the legal adviser in his or her capacity as a lawyer.⁴¹

As part of the Final Report, the Committee will research the scope of this duty and the duty of confidentiality owed by other professionals. In particular, we will examine the extent to which it justifies a refusal to produce documents. For the purposes of this Discussion Paper, however, it is important to note that, in contrast to legal professional privilege, the duty of confidentiality is not an absolute duty. This means it can be overridden by a statutory obligation to furnish information and/or produce documents. As such, it is a less important limit on agency powers because provisions requiring the production of documents will generally override it. Nevertheless, issues

⁴⁰ See discussion in Bolton (cited above at note 34): p 226.

⁴¹ See page 264 and following of GE Dal Pont (cited above at note 30).

may arise in the course of investigations as to whether certain confidential documents fall within the scope of the investigation.

Questions in relation to the duty of confidentiality

- How does the relevant agency handle issues of confidentiality? Are there systems or guidelines in place to ensure that confidentiality is maintained?
- Should the power to seize or require the production of documents be subject to statutory confidentiality requirements or guidelines?

Further limits on power to require production of documents

A number of other statutory or common law limits to the power to require the production of documents may apply to individual cases. In general, the limits concern which documents are required to be produced and who is required to produce them. We refer below to some of these issues which will be developed further in the Final Report.

Does the duty to produce documents extend beyond documents which are in a person's actual possession?

It is normally clear from the legislation that documents which are in a person's physical possession must be produced (subject to the justifications for a refusal to produce referred to above.) But what is the position with documents which are not actually in a person's possession but may nevertheless be said to be within his or her custody or power? Does a direction to produce documents extend to these documents? Most legislation is silent on this point. Nevertheless, case law suggests that courts are prepared to give the term "possession" a very wide meaning. For

instance, the requirement to produce documents may extend to those who have legal (but not physical) possession of the documents.⁴²

What is meant by “relevant documents,” “reasonable excuse” and “reasonable grounds”?

Many Acts require the production of “relevant” “documents.” Yet exactly what is meant by these terms is left undefined. The same can be said for the term “reasonable excuse” which frequently appears in the legislation. As part of this inquiry the Committee will examine the judicial interpretation of the terms “relevant,” “documents” and “reasonable excuse” as well as any similar terms such as “reasonable grounds”. The Committee is interested to hear from agencies and other interested parties as to how they interpret such terms in practice.

Questions relating to further limits on the power to require the production of documents

- Does the agency concerned generally require the production of documents which, while not in a person’s physical possession, are in his or her custody or power? (Give examples of such cases where possible.)
- How does the agency determine the meaning of “relevant” documents and whether a person has a “reasonable” excuse? Are there any guidelines in place?
- Should such terms be defined in the Act governing the power to seize or require the production of documents?

⁴² See, for instance, the High Court decision in *Federal Commission of Taxation v Australia and New Zealand Banking Group Limited* (1979) 143 CLR 499, discussed in Bolton (cited above at note 34).

3. ADDITIONAL ASSOCIATED POWERS

In identifying those acts which contain entry, search, seizure and questioning provisions two additional associated powers were identified as follows:

- The power to arrest a person
- The power to detain a person

Where these powers are closely associated with the powers specifically referred to in the terms of reference the Committee will also give consideration to them. It is necessary to consider authorised officers' powers within their legislative context which would not be possible without consideration of these additional powers.

The powers to arrest and/or detain a person represent a greater degree of abrogation of individual rights than those referred to in the terms of reference as they involve the deprivation of liberty and a restriction on freedom of movement. In addition, the exercise of these rights is likely to involve the use of physical force against the person.

These powers are restricted to fewer agencies than those granted power to enter, search, seize, question and require the production of documents. The lists below contain only acts whose powers of arrest and/or detention are associated with powers of entry, search, seizure or questioning.

i) Power of Arrest

The following Acts allow arrest without a warrant by an authorised person:⁴³

⁴³ The Parliamentary Precincts Act 2001 allows an authorised person to: remove a person from the parliamentary precincts, s 19; require a person's name and address, s.20; arrest a person who refuses to leave the parliamentary precinct on request, s. 21; and to detain a person until delivered into the custody of the police, s. 21. However, arrest and detention powers are not triggered by a power within our reference. The failure to provide name and address does not give grounds for arrest as it does in some other Acts. Therefore, the arrest and detention powers in this Act will not be considered as part of this reference.

- *Heritage Act 1995*
- *Transport Act 1983*
- *Wildlife Act 1975*
- *Fisheries Act 1995*

Heritage Act 1995

An inspector may require that a person provide his or her name and address when he believes an offence under the Act has been committed, s.149.

An inspector may, without a warrant, arrest a person who refuses to give his or her name and address where the inspector believes proceeding by way of summons would be ineffective, s. 154.

Transport Act

Allows an authorised officer to:

- Require a person to give her or his name and address, s. 218B
- Arrest, without warrant, a person, s. 219. This power applies in situations where the officer believes on reasonable grounds that the arrest is necessary to: ensure the appearance of the person before court; to preserve public order; to prevent the continuation or repetition of an offence or the commission of a further offence; or for the safety and welfare of the public.
- Detain a person until delivered into the custody of the police, s. 219AA.

Wildlife Act 1975

Allows an authorised officer to arrest a person without a warrant who either refuses to give a name and address or where the authorised officer believes the person has given false information, s.61.

Fisheries Act 1995

Allows an authorised officer to arrest a person without a warrant, who either refuses to give a name and address or where the authorised officer believes the person has given false information, s.109.

ii) Power to detain

In addition to the Acts above which allow both arrest and detention of a person, the following Acts also allow persons to be detained by an authorised person though not their arrest:⁴⁴

- *Health Act 1958*
- *Community Services Act 1970*

Health Act

Allows an authorised officer to stop and detain any person under its general powers of inspection and seizure, s 401.

Community Services Act 1970

Allows a summoning officer to detain a child for the purpose of obtaining his or her name and address in any street or public place who is apparently not attending school, s. 74B

⁴⁴ The following Acts also contain powers to detain:

- The *Cemeteries Act 1958* allows a trustee of a public cemetery or any officer or servant of the trustee to seize and detain any person committing an offence against the Act, and whose name and address is not known, s 42. However as there is no specified power to request the name and address of a person, this power to detain can not be considered to be an associated power for the purposes of this reference.
- The *Casino Control Act 1991* allows a person in charge of a casino, an agent of a casino operator or a casino employee to detain a person suspected on reasonable grounds of committing certain offences, until the arrival of a police officer, s. 81. In addition a person who is the subject of an exclusion order may be removed from the casino, s. 78.
- The *Gaming Machine Control Act 1991* allows an inspector or person who is a venue operator of licensed premises or an agent of a venue operator or relevant gaming operator or agent or a special employee to detain a person until the arrival of a police officer, s.86. In addition a person may be refused entry or removed for certain suspected offences or actual acts, s. 85.

Both the *Casino Control Act 1991* and the *Gaming Machine Control Act 1991* contain inspectors' powers relevant to this reference, however, the additional powers of detention and removal are not associated with the entry, search, seizure and questioning powers. The detention and removal powers are therefore not considered relevant to this inquiry.

Questions relating to these associated powers

The questions which need to be addressed in relation to these powers are the similar to those already raised above. In general they relate to the proportionality of the abrogation of personal rights to the public interest being protected. Because these powers in general place a greater imposition on individuals, their existence will in general require that a more important public interest is being protected.

Where the powers are activated by a refusal to provide a name and address the justification for their use relates to the need to make possible the enforcement of the legislation. This occurs in situations where the identity of the suspected offender is not known. While arrest and detention may seem rather draconian responses to, for example, the failure to purchase a ticket on public transport, they are currently one part of the mechanism by which the enforcement procedure functions. When considering whether their existence is justified, the public purpose served needs to be seen more broadly than the receipt of a particular fare. Rather the larger purpose of the provision of public transport needs to be considered.

In addition consideration needs to be given to whether another enforcement regime would work better without the need for these powers. Lastly if the powers are considered necessary, their use should be properly regulated and controlled.

**Questions relating to the Associated Powers of Arrest,
and Detention**

- Are the powers justified by the objective and intention of the legislation?
- Could a lesser power be substituted?
- If the powers are considered necessary, are they only available in limited and defined situations?
- Do those exercising the power have the necessary attributes as discussed in previous questions (relating to training, experience and seniority)?

- Is the use of the powers closely regulated?
- Is the use of the powers documented and reported on in a public document?
- Is the use of the powers regularly reviewed internally?
- What complaints procedures are there?
- Is there provision for external review of the powers?

Appendix 1

Glossary of Legal Terms

Common law: An unwritten body of law derived from cases decided by courts rather than from statutes passed by the legislature (Parliament).⁴⁵

Due process: In a strict sense this term refers to the right to a fair trial⁴⁶ but it is used in this Discussion Paper in the broader sense of “procedural fairness,” or those implied legal principles regarding statutory and prerogative⁴⁷ powers to ensure the fairness of the decision-making procedure of courts and administrators.⁴⁸

Duty of confidence: The express or implied duty of confidentiality owed by a professional to a client. In relation to lawyers the duty generally applies to any matter which has been communicated to the legal adviser in his or her capacity as a legal adviser.⁴⁹

⁴⁵ See VLRC Discussion Paper on Disputes between Co-owners at p 82.

⁴⁶ Butterworths Australian Legal Dictionary (General Editors: P Nygh and P Butt), Butterworths, 1997, p. 393.

⁴⁷ See <http://www.butterworths.com.au/legalwords/default.htm> – the common law powers of the Crown.

⁴⁸ See <http://www.butterworths.com.au/legalwords/default.htm> and Butterworths Australian Legal Dictionary, p. 393.

⁴⁹ See section on this issue in the Discussion Paper.

Indictable offence:

Indictable offences tend to be the more serious criminal offences. They are triable by a judge and a jury rather than by a judge or magistrate alone. Statutes generally state whether an offence is indictable and may create different categories of indictable offences.⁵⁰

Legal professional privilege:

The *common law* principle⁵¹ that confidential communications between legal practitioners and their clients for the sole purpose of giving legal advice in actual or contemplated litigation can only be given in evidence or otherwise disclosed if the client consents (and thereby “waives” the privilege).

Primary legislation:

Statutes (or Acts of Parliament) as opposed to statutory regulations or rules (see secondary legislation). In the current context, the most important powers of “authorised officers” are generally found in primary legislation.

Privilege against self- Incrimination

The common law right of a person to refuse to answer questions or to produce documents which may tend to incriminate the person of a criminal offence or expose the person to a civil penalty.⁵²

⁵⁰ See Butterworths Australian Legal Dictionary, p. 589.

⁵¹ However, the scope of the principle can be extended by Statute.

The privilege can be modified or excluded by legislation.⁵³

Trespass:

An intentional or negligent entry on to the land of a person without that person's consent and for which there is no right or authority. The law against trespass protects the individual's freedom from physical intrusion.⁵⁴

Search warrant:

A legal document generally issued by a magistrate or judge authorizing the search of a person, property, or thing.⁵⁵

Secondary legislation:

Regulations or similar rules made under the authority of an Act of Parliament (a piece of primary legislation).⁵⁶ Secondary legislation may also be referred to as "subordinate" or "delegated" legislation.

⁵² See <http://www.butterworths.com.au/legalwords/default.htm>

⁵³ See section on this issue in the Discussion Paper.

⁵⁴ Butterworths Australian Legal Dictionary, p. 1190.

⁵⁵ See <http://www.butterworths.com.au/legalwords/default.htm>

⁵⁶ See Parliament of Victoria Information Booklet, April 2000, p. 42.

Appendix 2

RELEVANT LEGISLATION

Accident Compensation (Workcover Insurance) Act 1993

ENTRY

s.70. Warrants to enter and search

SEARCH

s.70. Warrants to enter and search

SEIZURE

s.70. Warrants to enter and search

QUESTIONING

s.60. Authority may require employer to provide information

s.12. Inspection of policies

Agricultural Industry Development Act 1990

ENTRY

s.18. Powers of authorised officers

s.51. Powers of authorised officers

SEARCH

s.18. Powers of authorised officers

s.51. Powers of authorised officers

SEIZURE

s.51. *Powers of authorised officers*

QUESTIONING

s.51. *Powers of authorised officers*

Agricultural and Veterinary Chemicals (Control of Use) Act 1992

ENTRY

s.54. *Powers of authorised officers*

SEARCH

s.54. *Powers of authorised officers*

SEIZURE

s.54. *Powers of authorised officers*

s.57. *Seizure of chemical products and agricultural produce*

QUESTIONING

s.54. *Powers of authorised officers*

Associations Incorporation Act 1981

ENTRY

s.37E. *Inspector's powers of entry*

s.37F. *Search warrant*

s.37G. *Announcement before entry*

s.37H. *Details of warrant to be given to occupier*

SEARCH

- s.37E. *Inspector's powers of entry*
- s.37F. *Search warrant*
- s.37G. *Announcement before entry*
- s.37H. *Details of warrant to be given to occupier*

SEIZURE

- s.37F. *Search warrant*
- s.37I. *Seizure of documents or things not mentioned in the warrant*
- s.37K. *Functions of inspectors in relation to relevant documents*

QUESTIONING

- s.37D. *Inspectors may require certain persons to appear, answer questions and produce documents*
- s.37J. *Power of inspector to require information or documents*
- s.37K. *Functions of inspectors in relation to relevant documents*
- s.37M. *Protection from incrimination*
- s.37N. *Privilege*

Audit Act 1994

ENTRY

As incidental to search and seizure powers

SEARCH

- s.11. *Power to call for persons and documents*

SEIZURE

- s.11. *Power to call for persons and documents*

QUESTIONING

- s.11. *Power to call for persons and documents*
- s.12. *Access to information*

Building Act 1993

ENTRY

- s.229. *Power of entry--inspections of building or plumbing work*
- s.230. *Notice of entry*
- s.231. *Powers of entry—enforcement*
- s.231A. *Occupier to be given copy of consent*
- s.231B. *Search warrant*
- s.231C. *Announcement before entry*
- s.231D. *Copy of warrant to be given to occupier*
- s.231E. *Powers of authorised persons on entry*
- s.232. *Entry in emergency*
- s.75H. *Regulations*

SEARCH

- s.229. *Power of entry--inspections of building or plumbing work*
- s.230. *Notice of entry*
- s.231. *Powers of entry—enforcement*
- s.231A. *Occupier to be given copy of consent*
- s.231B. *Search warrant*
- s.231C. *Announcement before entry*
- s.231D. *Copy of warrant to be given to occupier*
- s.231E. *Powers of authorised persons on entry*
- s.75H. *Regulations*

SEIZURE

Not applicable

QUESTIONING

s.231F. *Powers of authorised person to require information or documents*

s.231G. *Copy of documents*

s.231H. *Protection against self-incrimination*

Business Franchise (Petroleum Products) Act 1979

ENTRY

As incidental to search and seizure

SEARCH

s.23. *Production of transportation records*

SEIZURE

s.24. *Temporary custody of road vehicles*

s.25. *Forfeiture of petroleum products*

QUESTIONING

Not applicable

Business Franchise (Tobacco) Act 1974

ENTRY

s.14. *Inspections*

s.15A. *Warrant to search for and seize books etc.*

SEARCH

s.14. *Inspections*

s.15A. *Warrant to search for and seize books etc.*

SEIZURE

s.14. *Inspections*

s.15A. *Warrant to search for and seize books etc.*

QUESTIONING

s.14. *Inspections*

s.15. *Power to Commissioner to obtain information*

Casino Control Act 1991

ENTRY

s.108. *Powers of inspectors*

s.109. *Search warrants*

SEARCH

s.108. *Powers of inspectors*

s.109. *Search warrants*

SEIZURE

s.108. *Powers of inspectors*

QUESTIONING

s.108. *Powers of inspectors*

s.110. *Offences relating to obstruction etc. of inspectors*

Catchment and Land Protection Act 1994

ENTRY

s.80. *Powers of inspection*

s.81. *Emergency entry*

s.82. *Entry with notice*

s.83. *Entry with warrant*

SEARCH

s.80. *Powers of inspection*

s.83. *Entry with warrant*

SEIZURE

s.80. *Powers of inspection*

s.83. *Entry with warrant*

QUESTIONING

s.80. *Powers of inspection*

s.84. Offences relating to enforcement

Charities Act 1978

ENTRY

Not applicable

SEARCH

Not applicable

SEIZURE

Not applicable (although there is a power to require the production of documents: S 10 Powers of inspection and S14 Evidence Act 1958).

QUESTIONING

s.10 *Powers of inspector (gives powers under S14 Evidence Act: Power to send for persons and papers and S15 Power of member of board to examine upon oath.)*

Children and Young Persons Act

ENTRY

s.256A. *Search*

SEARCH

s.3 *Definitions*

s.256A. *Search*

SEIZURE

s.69. *Protective intervener may take child in need of protection into safe custody*

s.70. *Making a protection application without taking child into safe custody*

s.80. *Procedure on breach of interim accommodation order*

s.95. *Breach of supervision order etc.*

s.111. *Breach of interim protection order etc.*

s.256A. *Search*

QUESTIONING

Not applicable

Children's Services Act 1996

ENTRY

s.36. *Powers of entry*

s.37. *Entry to premises of unlicensed search warrant*

SEARCH

s.36. *Powers of entry*

s.37. *Entry to premises of unlicensed search warrant*

SEIZURE

s.38. *Offence related search and seizure at licensed premises*

s.39. *Return of seized things*

s.40. *Magistrates' Court may extend period*

s.44. *Removal of children in emergency*

QUESTIONING

s.42. *Protection against self-incrimination*

Chinese Medicine Registration Act 2000

ENTRY

s.88. *Powers of entry with warrant*

s.89. *Announcement before entry*

s.90. *Copy of warrant to be given to occupier*

SEARCH

s.88. *Powers of entry with warrant*

s.89. *Announcement before entry*

s.90. *Copy of warrant to be given to occupier*

s.93. *Regulations*

SEIZURE

s.91. *Copies or receipts to be given*

s.93. *Regulations*

QUESTIONING

Not applicable

Chiropractors Registration Act 1996

ENTRY

s.82. *Powers of entry with warrant*

s.83. *Announcement before entry*

s.84. *Copy of warrant to be given to occupier*

SEARCH

s.82. *Powers of entry with warrant*

s.83. *Announcement before entry*

s.84. *Copy of warrant to be given to occupier*

s.88. *Regulations*

SEIZURE

s.85. *Copies or receipts to be given*

s.88. *Regulations*

QUESTIONING

Not applicable

**Classification (Publications, Films and Computer Games)(Enforcement) Act
1995**

ENTRY

- s.69. *Entry, search and seizure*
- s.70. *Informed consent*
- s.71. *Search warrant*
- s.72. *Announcement before entry*
- s.73. *Details of warrant to be given to occupier*
- s.84. *Regulations*

SEARCH

- s.69. *Entry, search and seizure*
- s.70. *Informed consent*
- s.71. *Search warrant*
- s.72. *Announcement before entry*
- s.73. *Details of warrant to be given to occupier*
- s.84. *Regulations*

SEIZURE

- s.74. *Seizure of things not mentioned in warrant*
- s.75. *Forfeiture*
- s.75A. *Forfeiture--commercial quantity*

QUESTIONING

- s.21. *Power to demand name, age and address*
- s.43. *Power to demand name, age and address*

Club Keno Act 1993

ENTRY

s.13E. *Search warrants*

s.13F. *Announcement before entry*

s.13G. *Copy of warrant to be given to occupier*

SEARCH

s.13E. *Search warrants*

s.13F. *Announcement before entry*

s.13G. *Copy of warrant to be given to occupier*

SEIZURE

s.13E. *Search warrants*

s.13H. *Copies to be given*

s.13I. *Return of seized things*

s.13J. *Magistrates' Court may extend period*

QUESTIONING

s.13D. *Powers of inspectors*

s.13K. *Offences relating to obstruction etc. of inspectors*

s.13L. *Protection against self-incrimination*

Community Services Act 1970

ENTRY

s.79 *Entry and inspection*

SEARCH

No specific search powers; however, section 79 implies the power of inspection.

SEIZURE

Not applicable.

QUESTIONING

s. 74B Summoning officers (power to “accost and detain” a child for the purpose of obtaining his or her name and address)

Control of Weapons Act 1990

ENTRY

s.10. Search without warrant

s.11. Warrant to search

s.12. Regulations

SEARCH

s.10. Search without warrant

s.11. Warrant to search

s.12. Regulations

SEIZURE

s.10. Search without warrant

s.11. Warrant to search

s.12. Regulations

QUESTIONING

Not applicable

Co-operatives Act 1996

ENTRY

s.399. *Search warrants*

s.402. *Police aid for inspectors*

SEARCH

s.395. *Powers of inspectors on premises entered*

s.399. *Search warrants*

s.402. *Police aid for inspectors*

SEIZURE

s.396. *Functions of inspectors in relation to relevant documents*

s.402. *Police aid for inspectors*

QUESTIONING

s.395. *Powers of inspectors on premises entered*

s.396. *Functions of inspectors in relation to relevant documents*

s.397. *Offence--failing to comply with requirements of inspector*

s.398. *Protection from incrimination*

s.400. *Copies or extracts of records to be admitted in evidence*

s.401. *Privilege*

s.402. *Police aid for inspectors*

s.407. *Privilege*

Corporations (Victoria) Act 1990

ENTRY

s.42AA. *Jurisdiction of Supreme Court in relation to certain decisions made by Commonwealth officers*

SEARCH

s.42AA. *Jurisdiction of Supreme Court in relation to certain decisions made by Commonwealth officers*

SEIZURE

s.42AA. *Jurisdiction of Supreme Court in relation to certain decisions made by Commonwealth officers*

QUESTIONING

Not applicable

Corrections Act 1986

ENTRY

As incidental to search and seizure

SEARCH

s.9A: *Authorisation of certain staff*

s.27: *Dogs*

s.44: *Formal Searches*

s.45: *Search*

s.100: *Search*

s.104B: *Formal searches in police goals*

s.104C: *Search powers*

SEIZURE

s.46: *Seizure*

s.101: *Seizure*

s.104D: *Seizure*

QUESTIONING

s.41. *Visits by the police*

Country Fire Authority Act 1958

ENTRY

As incidental to search and seizure

SEARCH

s.98. *Place where fire occurs*

s.109B. *Delegation*

SEIZURE

s.98. *Place where fire occurs*

s.109B. *Delegation*

QUESTIONING

Not applicable, see *Coroner's Act* for investigation provisions

Court Security Act 1980

ENTRY

Not applicable

SEARCH

s.3. *Powers of authorized officer*

s.6. *Regulations*

SEIZURE

Not applicable

QUESTIONING

s.3. *Powers of authorized officer*

Credit (Administration) Act 1984

ENTRY

s.26. *Entry or search with consent*

s.27. *Entry without consent or warrant*

s.28. *Search warrants*

s.29. *Announcement before entry*

s.30. *Details of warrant to be given to occupier*

SEARCH

s.26. *Entry or search with consent*

s.27. *Entry without consent or warrant*

s.28. *Search warrants*

s.29. *Announcement before entry*

s.30. *Details of warrant to be given to occupier*

SEIZURE

- s.31. *Seizure of things not mentioned in the warrant*
- s.32. *Embargo notice*
- s.33. *Copies of seized documents*
- s.34. *Retention and return of seized documents or things*
- s.35. *Magistrates' Court may extend 3 month period*

QUESTIONING

- s.20. *Specified persons to produce documents and answer questions*
- s.21. *Third parties to produce documents and answer questions relating to specified business*
- s.22. *Ministers, police and public authorities to produce information to inspectors*
- s.23. *Certain other specified persons or bodies to produce information*
- s.24. *Powers on production of documents*
- s.25. *Order requiring supply of information and answers to questions*
- s.36. *Requirement to assist inspector during entry*
- s.38. *Rule against self-incrimination does not apply*
- s.39. *Offence to give false or misleading information*
- s.89B. *Rule against self-incrimination does not apply*

Dangerous Goods Act 1985

ENTRY

- s.17 *Powers of inspectors*

SEARCH

No specific search powers; however, section 17 refers to the power to “investigate” and to “inspect”

SEIZURE

s.17 *Powers of inspectors*

QUESTIONING

s.17 *Powers of inspectors*

Dental Practice Act 1999

ENTRY

s.92. *Powers of entry with warrant*

s.93. *Announcement before entry*

s.94. *Copy of warrant to be given to occupier*

SEARCH

s.92. *Powers of entry with warrant*

s.93. *Announcement before entry*

s.94. *Copy of warrant to be given to occupier*

s.98. *Regulations*

SEIZURE

s.95. *Copies or receipts to be given*

s.98. *Regulations*

QUESTIONING

Not applicable

Disability Services Act 1991

ENTRY

- s.8 *Visiting a residential service provider (power is to “visit” with or without previous notice rather than to “enter”)*

SEARCH

- s.9 *Powers of inspection (refers to power to “inspect” rather than search).*

SEIZURE

Not applicable

QUESTIONING

- s.9 *Powers of inspection (refers to power to receive “reasonable assistance” and makes it an offence not to give “full and true answers” to questions asked by a community visitor.)*

Domestic (Feral and Nuisance) Animals Act 1994

ENTRY

- s.74. *Powers of authorised officers*
s.77A. *Warrants for search and seizure*
s.77B. *Announcement before entry*
s.77C. *Details of warrant to be given to occupier*

SEARCH

- s.74. *Powers of authorised officers*
- s.77A. *Warrants for search and seizure*
- s.77B. *Announcement before entry*
- s.77C. *Details of warrant to be given to occupier*

SEIZURE

- s.74. *Powers of authorised officers*
- s.75. *Seizure of documents*
- s.77. *Seizure of dogs or cats*
- s.77A. *Warrants for search and seizure*
- s.78. *Owner to be notified*
- s.80. *Power to sell or destroy seized dogs or cats*
- s.84. *Offence to unlawfully seize or destroy a dog or cat*

QUESTIONING

- s.74. *Powers of authorised officers*
- s.76. *Offence to refuse to give information or documents*

Electricity Industry Act 1993

ENTRY

- s.47H. *Powers of entry—enforcement*
- s.47I. *Occupier to be given copy of consent*
- s.47J. *Search warrant*
- s.47K. *Announcement before entry*
- s.47L. *Copy of warrant to be given to occupier*
- s.52. *Delegation*
- s.47. *Powers as to works etc.*

SEARCH

- s.47H. *Powers of entry—enforcement*
- s.47I. *Occupier to be given copy of consent*
- s.47J. *Search warrant*
- s.47K. *Announcement before entry*
- s.47L. *Copy of warrant to be given to occupier*
- s.52. *Delegation*
- s.47. *Powers as to works etc.*

SEIZURE

- s.47. *Powers as to works etc.*

QUESTIONING

Not applicable

Electricity Industry Act 2000

ENTRY

- s.100. *Powers of entry—enforcement*
- s.101. *Occupier to be given copy of consent*
- s.102. *Search warrant*
- s.103. *Announcement before entry*
- s.104. *Copy of warrant to be given to occupier*

SEARCH

- s.100. *Powers of entry—enforcement*
- s.101. *Occupier to be given copy of consent*
- s.102. *Search warrant*
- s.103. *Announcement before entry*
- s.104. *Copy of warrant to be given to occupier*

SEIZURE

Not applicable

QUESTIONING

s.70. *Power to require information relating to interests*

Electricity Safety Act 1998

ENTRY

- s.25. *Powers on entry*
- s.128. *Entry to be reported to Electrical Appeals Board*
- s.129. *Powers of entry—enforcement*
- s.130. *Occupier to be given copy of consent*
- s.131. *Search warrant*
- s.132. *Announcement before entry*
- s.133. *Copy of warrant to be given to occupier*
- s.157. *General regulation making powers*

SEARCH

- s.125. *Powers on entry*
- s.129. *Powers of entry—enforcement*
- s.130. *Occupier to be given copy of consent*
- s.131. *Search warrant*
- s.132. *Announcement before entry*
- s.133. *Copy of warrant to be given to occupier*
- s.157. *General regulation making powers*

SEIZURE

- s.125. *Powers on entry*

s.126. *Return of things seized*

s.127. *Magistrates' Court may extend period*

QUESTIONING

s.134. *Power of enforcement officer to require information or documents*

s.135. *Offence to give false information to enforcement officer*

s.136. *Copying of documents*

s.137. *Protection against self-incrimination*

s.148. *False or misleading information*

Environment Protection Act 1970

ENTRY

s.55. *Powers etc. of authorized officers*

SEARCH

s.55. *Powers etc. of authorized officers (details "inspection" powers)*

SEIZURE

s.55. *Powers etc of authorized officers*

QUESTIONING

s.55. *Powers etc of authorized officers*

s.54. *Furnishing of information*

s.54A. *Furnishing of information relating to emission of wastes or noise from motor vehicles*

s.56. *Power to demand name and address*

Equipment (Public Safety) Act 1994

ENTRY

s.13 *Powers of inspectors*

SEARCH

No specific “search” power but power to “inspect and examine” granted pursuant to s13(1)(a).

SEIZURE

s.13 *Powers of inspectors*

QUESTIONING

s.13 *Powers of inspectors*

Essential Services (Year 2000) Act 1999

ENTRY

s.15: *Powers of entry—enforcement*

s.17: *Search Warrant*

s.18: *Announcement before entry*

SEARCH

s.15: *Powers of entry—enforcement*

s.16: *Occupier to be given copy of consent*

s.17: *Search warrant*

s.18: *Announcement before entry*

s.19: *Copy of warrant to be given to occupier*

SEIZURE

Not applicable

QUESTIONING

Not applicable

Fair Trading Act 1999

ENTRY

- s.119. *Entry or search with consent1*
- s.120. *Entry of premises open to the public*
- s.121. *Emergency entry*
- s.122. *Search warrants*
- s.123. *Announcement before entry*
- s.124. *Details of warrant to be given to occupier*
- s.137. *Entry to be reported to the Director*
- s.138. *Register of exercise of powers of entry*

SEARCH

- s.119. *Entry or search with consent*
- s.121. *Emergency entry*
- s.122. *Search warrants*

SEIZURE

- s.117. *Inspector may seek Court order*
- s.119. *Entry or search with consent*
- s.121. *Emergency entry*
- s.122. *Search warrants*
- s.125. *Seizure of things not mentioned in the warrant*
- s.127. *Copies of seized documents*

s.128. *Retention and return of seized documents or things*

s.129. *Magistrates' Court may extend 3 month period*

s.130. *Taking samples*

QUESTIONING

s.117. *Inspector may seek Court order*

s.118. *Requirement to publisher to produce information*

s.133. *Protection against self-incrimination*

s.134. *Offence to give false or misleading information*

s.161. *Supplier to give documents*

Firearms Act 1996

ENTRY

s.53. *Surrender of firearms and licence document*

s.153A *Authorised officers under the Conservation, Forests and Lands Act 1987 to exercise powers under this Act*

SEARCH

s.146. *Warrants to search premises*

s.147. *Announcement before entry*

s.148. *Copy of the warrant to be given to occupier*

s.149. *Search of persons or vehicles*

s.153A. *Authorised officers under the Conservation, Forests and Lands Act 1987 to exercise powers under this Act*

SEIZURE

As incidental to entry and search powers

QUESTIONING

s.150. *Power to require production of licence*

First Home Owner Grant Act 2000

ENTRY

s.42. *Powers of entry and inspection*

s.43. *Search warrant*

s.44. *Announcement before entry*

s.45. *Copy of warrant to be given to occupier*

SEARCH

s.43. *Search warrant*

s.44. *Announcement before entry*

s.45. *Copy of warrant to be given to occupier*

SEIZURE

s.42. *Powers of entry and inspection*

QUESTIONING

s.42. *Powers of entry and inspection*

s.46. *Self-incrimination*

Fisheries Act 1995

ENTRY

s.60A. *Removal notice on cancellation or expiry of aquaculture licence*

s.S02. *Powers of entry and inspection*

s.103. *Powers to search dwelling house*

SEARCH

s.60A. *Removal notice on cancellation or expiry of aquaculture licence*

s.102. *Powers of entry and inspection*

s.103. *Powers to search dwelling house*

SEIZURE

s.60A. *Removal notice on cancellation or expiry of aquaculture licence*

s.104. *Provisions relating to the seizure of items*

s.105. *Powers of seizure*

s.106. *Forfeiture or return of things seized*

s.107. *Disposal of live fish or perishable things*

s.108. *Offence in relation to seized property*

s.108A *Retention notices*

QUESTIONING

s.109. *Offender to give name and address*

Flora and Fauna Guarantee Act 1988

ENTRY

s.57. *Powers of authorised officers*

SEARCH

s.57. *Powers of authorised officers*

SEIZURE

s.57. *Powers of authorised officers*

QUESTIONING

- s.57. *Powers of authorised officers*
- s.58. *Offence to obstruct an authorised officer*

Food Act 1984

ENTRY

- s.21. *Powers of authorized officers*

SEARCH

- s.21. *Powers of authorized officers*

SEIZURE

- s.21. *Powers of authorized officers*
- s.23. *Procedures on taking samples*
- s.24. *Duties of officer upon seizure and detention of article*
- s.25. *Keeping and storage of certain articles*
- s.26. *Remedy in respect of articles seized*
- s.27. *Destruction or other disposal of seized food*
- s.28. *Liability for costs and expenses of storage or destruction or other disposal of seized article*

QUESTIONING

- s.21. *Powers of authorized officers*

Forests Act 1958

ENTRY

- s.95. *Powers of entry by authorized officers etc.*

SEARCH

s.83: *Search warrant for secreted forest produce*

SEIZURE

Not applicable

QUESTIONING

Not applicable

Fundraising Appeals Act 1998

ENTRY

s.46: *Searches to monitor compliance with this Act*

s.48: *Occupier to be given copy of consent*

s.50: *Announcement before entry*

s.69: *Delegation by Minister*

s.72A: *Transitional provision relating to inspectors*

SEARCH

s.46: *Searches to monitor compliance with this Act*

s.47: *Offence-related searches and seizures*

s.48: *Occupier to be given copy of consent*

s.49: *Search warrant*

s.69: *Delegation by Minister*

s.72A: *Transitional provision relating to inspectors*

SEIZURE

s.52: *Receipt must be given for any thing seized*

s.53: *Copies of certain seized things to be given*

s.55: *Use or seizure of electronic equipment at premises*

s.57: *Return of seized things*

s.58: *Court may extend period*

s.69: *Delegation by Minister*

s.72A: *Transitional provision relating to inspectors*

QUESTIONING

s.59: *Power of inspector to require information or documents*

s.60: *Protection against self-incrimination*

s.61: *Inspectors etc. must not disclose information*

Gaming and Betting Act 1994

ENTRY

s.109. *Powers of inspectors*

s.110. *Search warrants*

s.142. *Regulations*

SEARCH

s.109. *Powers of inspectors*

s.110. *Search warrants*

s.142. *Regulations*

SEIZURE

s.109. *Powers of inspectors*

QUESTIONING

s.29. *Provision of information*

s.55. *Power to require information relating to entitlement to shares in licensee*

s.132. *False or misleading information*

s.139. *Information gathering for law enforcement purposes*

Gaming Machine Control Act 1991

ENTRY

s.126. *Powers of inspectors*

s.127. *Search warrants*

SEARCH

s.74. *Unlawful interference with gaming equipment*

s.126. *Powers of inspectors*

s.127. *Search warrants*

SEIZURE

s.126. *Powers of inspectors*

s.127. *Search warrants*

QUESTIONING

s.126. *Powers of inspectors*

s.138I. *Disclosure of interests*

Gaming No.2 Act 1997

ENTRY

s.77 *Rights of inspector in certain premises*

s.81. *Search warrant*

SEARCH

s.78 *Functions of inspectors*

s.81. *Search warrant*

s.105. *Regulations*

SEIZURE

s.79 *Powers of inspectors*

s.82. *Return of items seized*

s.83. *Magistrates' Court may extend period*

s.105. *Regulations*

QUESTIONING

s.79 *Powers of inspectors*

s.84. *Protection against self-incrimination*

Gas Industry Act 1994

ENTRY

s.31B. *Powers of entry—enforcement*

s.31C. *Occupier to be given copy of consent*

s.31D. *Search warrant*

s.31E. *Announcement before entry*

s.31F. *Copy of warrant to be given to occupier*

SEARCH

s.31B. *Powers of entry—enforcement*

s.31C. *Occupier to be given copy of consent*

s.31D. *Search warrant*

s.31E. *Announcement before entry*

s.31F. *Copy of warrant to be given to occupier*

SEIZURE

Not applicable

QUESTIONING

s.45OB. *Disclosure of interests*

s.45V. *Power to obtain information and documents*

s.45W. *Restriction on disclosure of confidential information*

s.45X. *Application against disclosure notice*

Gas Safety Act 1997

ENTRY

s.89 *Emergency Access*

s.90. *Powers on entry*

s.93. *Entry to be reported to Gas Appeals Board*

s.94. *Powers of entry—enforcement*

s.95. *Occupier to be given copy of consent*

s.96. *Search warrant*

s.97. *Announcement before entry*

s.98. *Copy of warrant to be given to occupier*

SEARCH

s.90. *Powers on entry*

s.94. *Powers of entry—enforcement*

s.95. *Occupier to be given copy of consent*

s.96. *Search warrant*

s.97. *Announcement before entry*

s.98. *Copy of warrant to be given to occupier*

SEIZURE

- s.90. *Powers on entry*
- s.91. *Return of things seized*
- s.92. *Magistrates' Court may extend period*

QUESTIONING

- s.99. *Power of inspector to require information or documents*
- s.100. *Offence to give false information to inspector*
- s.101. *Copying of documents*
- s.102. *Protection against self-incrimination*
- s.103. *Offence to obstruct inspector*

Guardianship and Administration Act 1986

ENTRY

- s.27(1) *Special powers in respect of persons with a disability (Tribunal may order a specified person to “visit” the person with a disability under certain circumstances)*
- s.27(3) *Allows member of police force to “enter the premises where the person with a disability is.”*

SEARCH

Not applicable

SEIZURE

No direct power (but s.27(2) allows the Tribunal to make an order enabling the person with a disability to be taken to a place specified in the order for assessment and placement.)

QUESTIONING

Not applicable.

Health Act 1958

ENTRY

s.146. *Regulations*

SEARCH

s.146. *Regulations*

SEIZURE

s.146. *Regulations*

QUESTIONING

Not applicable

Health Services Act 1988

ENTRY

s.120. *Powers of inspection*

s.147A *Entry to unregistered search warrant*

SEARCH

s.120. *Powers of inspection*

s.147. *Powers of authorised officers*

s.147A *Entry to unregistered search warrant*

SEIZURE

s.147. *Powers of authorised officers*

QUESTIONING

s.20. *Powers of inspection*

s.147. *Powers of authorised officers*

s.151. *False and misleading statements*

Heritage Act 1995

ENTRY

s.150. *Powers of entry—generally*

s.150A. *Search warrant for residence*

s.150B. *Announcement before entry of residence on warrant*

s.150C. *Copy of warrant to be given to occupier*

s.150D. *Powers of inspectors on entry on warrant*

s.153. *Powers of inspectors in relation to historic shipwrecks*

s.155. *Search warrants - historic shipwrecks*

s.185. *Regulations generally*

s.186. *Regulations relating to historic shipwrecks and historic shipwreck relics*

SEARCH

s.150. *Powers of entry - generally*

s.150A. *Search warrant for residence*

s.150B. *Announcement before entry of residence on warrant*

s.150C. *Copy of warrant to be given to occupier*

s.150D. *Powers of inspectors on entry on warrant*

s.153. *Powers of inspectors in relation to historic shipwrecks*

s.155. *Search warrants--historic shipwrecks*

s.185. *Regulations generally*

SEIZURE

s.152. *Seizure and forfeiture of archaeological relics*

s.156. *Seizure and forfeiture--historic shipwrecks*

s.185. *Regulations generally*

QUESTIONING

s.149. *Inspector may demand name and address*

s.151. *Powers of inspectors in relation to archaeological relics*

Human Tissue Act 1982

ENTRY

No specific power but implied by power to inspect (*s.36: inspectors of schools of anatomy*)

SEARCH

s.36 *Inspectors of schools of anatomy (power to “inspect” rather than to “search”)*

SEIZURE

Not applicable

QUESTIONING

Not applicable

Infertility Treatment Act 1995

ENTRY

s.162. *Search warrants*

s.156. *Powers and duties of members of Authority and authorised officers*

s.157. *Offence to obstruct or hinder*

SEARCH

s.162. *Search warrants*

s.165. *Regulations*

SEIZURE

s.162. *Search warrants*

s.165. *Regulations*

QUESTIONING

s.156. *Powers and duties of members of Authority and authorised officers*

s.157. *Offence to obstruct or hinder*

Intellectually Disabled Persons' Services Act 1986

ENTRY

s.56 *Visiting a residential institution (Act refers to duty to “visit” rather than to “enter”)*

SEARCH

s.57 *Powers of inspection (power to “inspect any part of the premises” – S57(1)(a) rather than to “search.”)*

SEIZURE

Not applicable

QUESTIONING

s.57 *Powers of inspection*

Interactive Gaming (Player Protection) Act 1999

ENTRY

s.60. *Search warrants*

SEARCH

s.60. *Search warrants*

SEIZURE

s.60. *Search warrants*

QUESTIONING

s.61. *Offences relating to obstruction etc. of inspectors*

s.65. *Information gathering for law enforcement purposes*

s.66. *Authority may hold inquiries*

Introduction Agents Act 1997

ENTRY

s.42: *Searches to monitor compliance with this Act*

s.44: *Occupier to be given copy of consent*

s.45: *Search warrant*

s.46: *Announcement before entry*

SEARCH

s.42: *Searches to monitor compliance with this Act*

s.43: *Offence-related searches and seizures*

s.45: *Search warrant*

s.46: *Announcement before entry*

s.47: *Copy of warrant to be given to occupier*

SEIZURE

s.43. *Offence-related searches and seizures*

s.48. *Receipt must be given for any thing seized*

s.49. *Copies of certain seized things to be given*

s.50. *Use of equipment to examine or process things*

s.51. *Use or seizure of electronic equipment at premises*

s.53. *Return of seized things*

s.54. *Magistrates' Court may extend period*

QUESTIONING

s.55. *Power of inspector to require information or documents*

s.56. *Protection against self-incrimination*

s.57. *Inspectors must not disclose information*

Legal Practice Act 1996

ENTRY

s.195. *Power of entry with warrant*

s.196. *Inspector must report on investigation*

SEARCH

s.195. *Power of entry with warrant*

s.196. *Inspector must report on investigation*

SEIZURE

Not applicable

QUESTIONING

Not applicable

Liquor Control Reform Act 1998

ENTRY

s.129. *Entry to licensed premises*

s.130. *General warrant to enter and search*

s.171. *Power of entry and inspection*

SEARCH

s.130. *General warrant to enter and search*

s.133. *Further search and seizure powers*

SEIZURE

s.133. *Further search and seizure powers*

s.127. *Seizure of evidence of age document*

s.128. *Seizure of liquor from minors*

QUESTIONING

s.126. *Power to demand suspected minor to give his or her age*

Livestock Disease Control Act 1994

ENTRY

s.116. *Search and entry and other powers*

s.121. *Powers of entry with warrant*

SEARCH

s.116. *Search and entry and other powers*

s.21. *Powers of entry with warrant*

SEIZURE

s.14. *Destruction or disposal of livestock*

s.15. *Destruction or disposal of diseased livestock*

s.37. *Notice of destruction order*

s.119. *Power of seizure and destruction*

s.120. *Seized livestock and property*

QUESTIONING

s.118. *Power to obtain information*

Local Government Act 1989

ENTRY

s.224 *Authorised Officers*

SEARCH

No specific search power (but power to enter land “to carry out and enforce this or any other Act or any regulation or local law:” s.224 Authorised Officers)

SEIZURE

Not applicable.

QUESTIONING

s.224 *Authorised Officers* (power to demand name and address)

Lotteries Gaming and Betting Act 1966

ENTRY

- s.45. *Warrant to enter common gaming house and search and seize on premises*
- s.47. *Obstructing entry to be evidence of house being a common gaming house*
- s.59. *Entry by police*
- s.61. *Special warrant to enter premises suspected to be used as accessory to a common gaming house*
- s.83. *Entry of police to public place or street*
- s.85. *Search warrant*

SEARCH

- s.45. *Warrant to enter common gaming house and search and seize on premises*
- s.61. *Special warrant to enter premises suspected to be used as accessory to a common gaming house*
- s.59. *Entry by police*
- s.66C. *Search and seizure of instruments of betting*
- s.85. *Search warrant*

SEIZURE

- s.45. *Warrant to enter common gaming house and search and seize on premises*
- s.61. *Special warrant to enter premises suspected to be used as accessory to a common gaming house*
- s.66C. *Search and seizure of instruments of betting*

QUESTIONING

Not applicable

Magistrates' Court Act 1989

ENTRY

- s.64. *Authority conferred by warrant to arrest*
- s.82D. *Directions in, and authority of, penalty enforcement warrant*

SEARCH

- s.57. *Warrants*
- s.64. *Authority conferred by warrant to arrest*
- s.75. *Search warrants*
- s.76. *Persons to whom search warrant may be directed*
- s.78. *Authority conferred by search warrant*
- s.82D. *Directions in, and authority of, penalty enforcement warrant*

SEIZURE

- s.57. *Warrants*
- s.64. *Authority conferred by warrant to arrest*
- s.73. *Warrant to seize property*
- s.74. *Authority conferred by warrant to seize property*
- s.82F. *Rules etc. with respect to execution of penalty enforcement warrant*
- s.111. *Enforcement of orders*
- s.137. *Forfeitures may be sold*
- s.137A *How unsold seized property to be handled*

QUESTIONING

- s.82G. *Requirement to give name and address*

Marine Act 1988

ENTRY

s.83. *Powers of inspectors*

s.85A. *Powers of entry in relation to lights*

SEARCH

s.83. *Powers of inspectors*

SEIZURE

s.12. *Seizure of registration plates*

QUESTIONING

s.18. *Owner must give information*

s.19. *Person in charge must stop and give name and address*

s.83A. *Offence to fail to comply with request of inspector*

Meat Industry Act 1993

ENTRY

s.72. *Powers of inspectors*

s.78. *Regulations*

SEARCH

s.72. *Powers of inspectors*

s.58. *Delegation*

SEIZURE

s.72. *Powers of inspectors*

s.78. *Regulations*

s.58. *Delegation*

QUESTIONING

s.72. *Powers of inspectors*

Medical Practice Act 1994

ENTRY

s.93A. *Powers of entry with warrant*

s.93B. *Announcement before entry*

s.93C. *Copy of warrant to be given to occupier*

SEARCH

s.93A. *Powers of entry with warrant*

s.93B. *Announcement before entry*

s.93C. *Copy of warrant to be given to occupier*

SEIZURE

s.93D. *Copies or receipts to be given*

QUESTIONING

Relevance limited to applications for license.

Mental Health Act 1986

ENTRY

s.109 *Functions of a community visitor (power to “visit any mental health service in the region” rather than to “enter”).*

SEARCH

s.112 *Powers of inspection (community visitor is entitled to “inspect any part of the premises”)*.

SEIZURE

Not applicable

QUESTIONING

s.112 *Powers of inspection*

Metropolitan Fire Brigades Act 1958

ENTRY

As incidental to search

SEARCH

s.71. *Place where fire occurs*

s.24B. *Power of delegation*

SEIZURE

As incidental to search

QUESTIONING

Not applicable

Motor Car Traders Act 1986

ENTRY

s.82AG. *Entry or search with consent*

- s.82AH. *Entry without consent or warrant*
- s.82AI. *Search warrants*
- s.82AJ. *Announcement before entry*
- s.82AK. *Details of warrant to be given to occupier*
- s.82AQ. *Requirement to assist inspector during entry*

SEARCH

- s.82AG. *Entry or search with consent*
- s.S2AH. *Entry without consent or warrant*
- s.82AI. *Search warrants*
- s.82AJ. *Announcement before entry*
- s.82AK. *Details of warrant to be given to occupier*

SEIZURE

- s.82AL. *Seizure of things not mentioned in the warrant*
- s.82AM. *Embargo notice*
- s.82AN. *Copies of seized documents*
- s.82AO. *Retention and return of seized documents or things*
- s.82AP. *Magistrates' Court may extend 3 month period*

QUESTIONING

- s.82A. *Documents available for inspection*
- s.82AA. *Specified persons to produce documents and answer questions*
- s.82AB. *Third parties to produce documents and answer questions relating to trader's business*
- s.82AC. *Ministers, police, and public authorities to produce information to inspectors*
- s.82AD. *Certain other specified persons or bodies to produce information*
- s.82AE. *Powers on production of documents*
- s.82AF. *Order requiring supply of information and answers to questions*
- s.82AS. *Rule against self-incrimination does not apply*
- s.82AT. *Offence to give false or misleading information*

s.82AY. *Rule against self-incrimination does not apply*

Murray Valley Citrus Marketing Act 1989

ENTRY

s.81. *Powers of authorised officers*

SEARCH

s.81. *Powers of authorised officers*

s.83. *Police may detain vehicles*

SEIZURE

Not applicable

QUESTIONING

s.81. *Powers of authorised officers*

s.82. *Offence to obstruct an authorised officer*

s.85. *Registered producers and approved receivers to give information to Board*

OTHER RELEVANT PROVISIONS

s.80. *Authorised officers*

Nurses Act 1993

ENTRY

s.88. *Powers of entry*

SEARCH

s.88. *Powers of entry*

SEIZURE

Not applicable

QUESTIONING

s.88. *Powers of entry*

Occupational Health and Safety Act 1985

ENTRY

s.39. *Powers of inspectors*

SEARCH

s.39. *Powers of inspectors* (no specific power but allows inspectors to “inspect and examine”)

SEIZURE

s.39. *Powers of inspectors*

QUESTIONING

s.39. *Powers of inspectors*

Ombudsman Act 1974

ENTRY

s.21: *Entry of Premises*

SEARCH

S21: *No specific power but power to “inspect” anything on premises*

SEIZURE

Not applicable.

QUESTIONING

s. 17. *Evidence Act (Power to send for witnesses and documents)*

Optometrists Registration Act 1996

ENTRY

s.86. *Powers of entry with warrant*

s.87. *Announcement before entry*

s.88. *Copy of warrant to be given to occupier*

SEARCH

s.86. *Powers of entry with warrant*

s.87. *Announcement before entry*

s.88. *Copy of warrant to be given to occupier*

s.92. *Regulations*

SEIZURE

s.89. *Copies or receipts to be given*

s.92. *Regulations*

QUESTIONING

Not applicable

Osteopaths Registration Act 1996

ENTRY

- s.81. *Identification*
- s.82. *Powers of entry with warrant*
- s.83. *Announcement before entry*
- s.84. *Copy of warrant to be given to occupier*

SEARCH

- s.81. *Identification*
- s.82. *Powers of entry with warrant*
- s.83. *Announcement before entry*
- s.84. *Copy of warrant to be given to occupier*

SEIZURE

- s.85. *Copies or receipts to be given*

QUESTIONING

Not applicable

Parliamentary Precincts Act 2001

ENTRY

Not applicable

SEARCH

Not applicable

SEIZURE

Not applicable

QUESTIONING

s.21. Power to require name and address

Petroleum Act 1998

ENTRY

s.199. *Monitoring compliance with this Act*

s.202. *Occupier to be given copy of consent*

s.203. *Search warrant*

s.204. *Announcement before entry*

SEARCH

s.199. *Monitoring compliance with this Act*

s.200. *Emergencies*

s.201. *Offence-related searches and seizures*

s.202. *Occupier to be given copy of consent*

s.S03. *Search warrant*

s.204. *Announcement before entry*

s.205. *Copy of warrant to be given to occupier*

SEIZURE

s.206. *Receipt must be given for any thing seized*

s.207. *Copies of certain seized things to be given*

s.208. *Use of equipment to examine or process things*

s.209. *Use or seizure of electronic equipment at premises*

s.211. *Return of seized things*

s.212. *Magistrates' Court may extend period*

QUESTIONING

s.213. *Power of inspector to require information or documents*

s.214. *Protection against self-incrimination*

s.215. *Offence to obstruct inspector*

Petroleum (Submerged Lands) Act 1982

ENTRY

s.151E. *Powers of authorized persons*

s.151F. *Search warrants*

s.151G. *Exercise of powers in serious circumstances*

SEARCH

s.151E. *Powers of authorized persons*

s.151F. *Search warrants*

s.151G. *Exercise of powers in serious circumstances*

SEIZURE

Not applicable

QUESTIONING

Not applicable

Pharmacists Act 1974

ENTRY

s.19. *Powers of inspectors*

SEARCH

- s.19. *Powers of inspectors (but power is to “examine any room or part of the premises” rather than to “search.”)*

SEIZURE

No specific power but section 20 allows Board to require a pharmacist to submit for examination any books, records or other documents kept by the pharmacist.

QUESTIONING

Not applicable

Physiotherapists Registration Act 1998

ENTRY

- s.80. *Identification*
s.81. *Powers of entry with warrant*
s.82. *Announcement before entry*
s.83. *Copy of warrant to be given to occupier*

SEARCH

- s.80. *Identification*
s.81. *Powers of entry with warrant*

SEIZURE

- s.84. *Copies or receipts to be given*

QUESTIONING

Not applicable

Planning and Environment Act 1987

ENTRY

- s.133. *Powers of entry*
- s.134. *What must be done before entry?*
- s.135. *Powers of authorised persons who enter land*
- s.136. *Police to assist authorised persons*

SEARCH

Not applicable

SEIZURE

Not applicable

QUESTIONING

Not applicable

Plant Health and Plant Products Act 1995

ENTRY

- s.52. *General powers of inspectors*
- s.53. *Inspector's powers of detention and seizure*
- s.56. *Power to enter private property to lay baits etc.*
- s.58. *Search and entry and other powers*

SEARCH

- s.52. *General powers of inspectors*
- s.53. *Inspector's powers of detention and seizure*
- s.58. *Search and entry and other powers*
- s.72. *Regulations*

SEIZURE

- s.10. *Destruction or disposal of plants etc.*
- s.52. *General powers of inspectors*
- s.53. *Inspector's powers of detention and seizure*
- s.54. *Inspector's powers of detention*
- s.55. *Procedures on taking samples*
- s.58. *Search and entry and other powers*
- s.72. *Regulations*

QUESTIONING

- s.59. *Power to obtain information*

Podiatrists Registration Act 1997

ENTRY

- s.82. *Powers of entry with warrant*
- s.83. *Announcement before entry*
- s.84. *Copy of warrant to be given to occupier*

SEARCH

- s.82. *Powers of entry with warrant*
- s.83. *Announcement before entry*
- s.84. *Copy of warrant to be given to occupier*
- s.88. *Regulations*

SEIZURE

- s.85. *Copies or receipts to be given*
- s.88. *Regulations*

QUESTIONING

Not applicable

Police Regulation Act 1958

ENTRY

- s.100. *Entry, search and seizure*
- s.100A. *Search warrant*
- s.100B. *Announcement before entry*
- s.100C. *Details of warrant to be given to occupier*

SEARCH

- s.100. *Entry, search and seizure*
- s.100A. *Search warrant*
- s.100B. *Announcement before entry*
- s.100C. *Details of warrant to be given to occupier*

SEIZURE

- s.100. *Entry, search and seizure*
- s.100A. *Search warrant*
- s.100D. *Seizure of things not mentioned in the warrant*
- s.100E. *Copies of seized documents*
- s.100F. *Retention and return of seized things*
- s.100G. *Magistrates' Court may extend 6 month period*
- s.100H. *Things seized may be used in connection with investigations into conduct*

QUESTIONING

- s.86Q. *Power to require answers etc. of a member of the force*

Prevention of Cruelty to Animals Act 1986

ENTRY

- s.21. *Powers of inspectors*
- s.22A. *Powers of specialist inspectors*

SEARCH

- s.21. *Powers of inspectors (no specific search power but power to “inspect and examine”)*
- s.22A. *Powers of specialist inspectors*

SEIZURE

- s.21. *Powers of inspectors (but limited to “impounding” animals in certain circumstances: S21(1)(d) and taking samples of animals or other things: S21(2C)(b))*
- s.22A. *Powers of specialist inspectors*

QUESTIONING

- s.21. *Powers of inspectors*

Prostitution Control Act 1994

ENTRY

- s.61J. *Entry or search with consent*
- s.61K. *Entry without consent or warrant*
- s.61L. *Search warrants*
- s.61M. *Announcement before entry*
- s.61N. *Details of warrant to be given to occupier*

SEARCH

- s.61J. *Entry or search with consent*
- s.61K. *Entry without consent or warrant*
- s.61L. *Search warrants*
- s.61M. *Announcement before entry*
- s.61N. *Details of warrant to be given to occupier*

SEIZURE

- s.61K. *Entry without consent or warrant*
- s.61L. *Search warrants*
- s.61O. *Seizure of things not mentioned in the warrant*
- s.61Q. *Copies of seized documents*
- s.61R. *Retention and return of seized documents or things*
- s.61S. *Magistrates' Court may extend 3 month period*

QUESTIONING

- s.61C. *Accounts and other documents available for inspection*
- s.61D. *Licencees to produce documents and answer questions*
- s.61E. *Third parties to produce documents and answer questions relating to specified business*
- s.61F. *Department Heads, police and public authorities to produce information to inspectors*
- s.61G. *Certain other specified persons or bodies to produce information*
- s.61H. *Powers on production of documents*
- s.61I. *Order requiring supply of information and answers to questions*
- s.61V. *Rule against self-incrimination does not apply*
- s.61W. *Offence to give false or misleading information*

Psychologists Registration Act 2000

ENTRY

- s.88. *Powers of entry with warrant*
- s.89. *Announcement before entry*
- s.90. *Copy of warrant to be given to occupier*

SEARCH

- s.88. *Powers of entry with warrant*
- s.89. *Announcement before entry*
- s.90. *Copy of warrant to be given to occupier*
- s.93. *Regulations*

SEIZURE

- s.91. *Copies or receipts to be given*
- s.93. *Regulations*

QUESTIONING

Not applicable

Public Lotteries Act 2000

ENTRY

As per search

SEARCH

- s.75. *Search warrants*

s.85. *Delegation by Authority*

s.86. *Delegation by Secretary*

s.87. *Regulations*

SEIZURE

s.76. *Return of items seized*

s.77. *Magistrates' Court may extend period*

s.85. *Delegation by Authority*

s.86. *Delegation by Secretary*

s.87. *Regulations*

QUESTIONING

s.78. *Protection against self-incrimination*

s.85. *Delegation by Authority*

s.86. *Delegation by Secretary*

s.87. *Regulations*

Road Safety Act 1986

ENTRY

Not applicable

SEARCH

s.59. *General duty of driver of motor vehicle*

SEIZURE

Not applicable

QUESTIONING

s.59. *General duty of driver of motor vehicle*

s.95. *Regulations*

s.60A. *Duty of owner of trailer to give information*

Seamen's Act 1958

ENTRY

As incidental to search powers

SEARCH

s.3: *Vessels may be boarded and searched*

s.4: *Penalty for wilfully obstructing or resisting persons in search of seamen*

s.9: *Vessels or places may be searched*

SEIZURE

Not applicable

QUESTIONING

Not applicable

Stock (Seller Liability & Declarations) Act 1993

ENTRY

s.27. *Powers of person holding a warrant*

SEARCH

s.27. *Powers of person holding a warrant (power to "inspect" rather than to "search.")*

SEIZURE

- s.27. No direct power of seizure but related power to “require the immediate production” of certain articles: S27(1)(c)

QUESTIONING

- s.27. *Powers of person holding a warrant (power to require any person found on the premises to state full name and address: S27(1)(b))*

Surveillance Devices Act 1999

ENTRY

- s.18. *What a warrant authorises*
s.26. *Emergency authorisations*
s.27. *Form and duration of emergency authorisation*
s.33. *Search warrant*
s.34. *Announcement before entry*

SEARCH

- s.33. *Search warrant*
s.34. *Announcement before entry*
s.35. *Copy of warrant to be given to occupier or person searched*

SEIZURE

Relevant to removal of devices but not personal property

QUESTIONING

Not applicable

Taxation Administration Act 1997

ENTRY

s.76: *Searches without a warrant*

s.77: *Search warrant*

s.78: *Announcement before entry*

SEARCH

s.76: *Searches without a warrant*

s.77: *Search warrant*

s.78: *Announcement before entry*

s.79: *Copy of warrant to be given to occupier*

SEIZURE

s.81: *Use or seizure of electronic equipment at premises*

s.83: *Copies to be given*

s.84: *Return of documents and things*

s.85: *Magistrates' Court may extend period*

QUESTIONING

s.86: *Power of authorised officer to require information or documents*

s.87: *Self-incrimination*

OTHER RELEVANT PROVISIONS

s.89: *Impersonating Commissioner or authorised officer*

Taxation (Reciprocal Powers) Act 1987

ENTRY

s.6. *Investigation powers*

s.9. *Regulations*

SEARCH

s.6. *Investigation powers*

s.9. *Regulations*

SEIZURE

s.6. *Investigation powers*

s.9. *Regulations*

QUESTIONING

s.6. *Investigation powers*

s.6A. *False or misleading statements*

s.7. *Disclosure of information to Commonwealth, State or Territory officers*

s.9. *Regulations*

OTHER RELEVANT PROVISIONS

Schedule 1: Warrant to enter premises

Therapeutic Goods (Victoria) Act 1994

ENTRY

s.57. *Monitoring compliance with Act*

s.58. *Entry and search of premises—evidence of offences*

s.61. *Offence related warrants*

s.62. *Identity cards*

SEARCH

s.58. *Entry and search of premises—evidence of offences*

s.59. *General powers of authorised persons in relation to premises*

s.60. *Monitoring warrants*

s.61. *Offence related warrants*

s.62. *Identity cards*

SEIZURE

s.58. *Entry and search of premises – evidence of offences*

s.63. *Offences*

QUESTIONING

Not applicable

Tobacco Act 1987

ENTRY

s.36D. *Entry or search with consent*

s.36E. *Entry of premises open to the public*

s.36F. *Search warrants*

s.36G. *Announcement before entry*

s.36H. *Details of warrant to be given to occupier*

SEARCH

s.36D. *Entry or search with consent*

s.36F. *Search warrants*

s.36G. *Announcement before entry*

s.36H. *Details of warrant to be given to occupier*

SEIZURE

s.36D. *Entry or search with consent*

s.36F. *Search warrants*

s.36J. *Copies of seized documents*

s.36K. *Retention and return of seized documents or things*

s.36L. *Magistrates' Court may extend 3 month period*

QUESTIONING

s.26. *Disclosure of interests etc.*

s.36C. *Power to require names and addresses*

s.36O. *Protection against self-incrimination*

s.36P. *Offence to give false or misleading information*

s.42A. *Power to require names of persons supplied with tobacco*

Trade Measurement Act 1995

ENTRY

s.60. *Powers of entry*

SEARCH

s.60. *Powers of entry*

SEIZURE

s.62. *Powers in relation to articles*

s.64. *Return of seized property*

QUESTIONING

s.62. *Powers in relation to articles*

s.66. *Self-incrimination*

Trade Measurement (Administration) Act 1995

ENTRY

s.16: Search warrant

SEARCH

s.16: Search warrant

SEIZURE

s.16: *Search warrant*

QUESTIONING

Not applicable

Transport Act 1983

ENTRY

s.42. *Acquisition of land*

s.129E *Searches to monitor compliance with this Division*

s.S9I. *Announcement before entry*

SEARCH

s.129E. *Searches to monitor compliance with this Division*

s.129F. *Offence-related searches and seizures*

s.129G. *Occupier to be given copy of consent*

s.129H. *Search warrant*

s.129I. *Announcement before entry*

s.129J. *Copy of warrant to be given to occupier*

SEIZURE

s.129F. *Offence-related searches and seizures*

s.129K. *Receipt must be given for any thing seized*

- s.129L. *Copies of certain seized things to be given*
- s.129M. *Use of equipment to examine or process things*
- s.129N. *Use or seizure of electronic equipment at premises*
- s.129P. *Return of seized things*
- s.129Q. *Magistrates' Court may extend period*

QUESTIONING

- s.129R. *Power of inspector to require information or documents*
- s.129S. *Protection against self-incrimination*

OTHER RELEVANT PROVISIONS

- s.129D. *Secretary may authorise people to carry out inspections*

Travel Agents Act 1986

ENTRY

- s.39I. *Entry or search with consent*
- s.39J. *Entry without consent or warrant*
- s.39K. *Search warrants*
- s.39L. *Announcement before entry*
- s.39M. *Details of warrant to be given to occupier*

SEARCH

- s.39I. *Entry or search with consent*
- s.39J. *Entry without consent or warrant*
- s.39K. *Search warrants*
- s.39L. *Announcement before entry*
- s.39M. *Details of warrant to be given to occupier*

SEIZURE

- s.39I. *Entry or search with consent*
- s.39J. *Entry without consent or warrant*
- s.39K. *Search warrants*
- s.39N. *Seizure of things not mentioned in the warrant*
- s.39P. *Copies of seized documents*
- s.39Q. *Retention and return of seized documents or things*
- s.39R. *Magistrates' Court may extend 3 month period*

QUESTIONING

- s.39B. *Documents available for inspection*
- s.39C. *Licensee or specified person to produce documents and answer questions*
- s.39D. *Third parties to produce documents and answer questions relating to licensee's business*
- s.39E. *Ministers, police and public authorities to produce information to inspectors*
- s.39F. *Certain other specified persons or bodies to produce information*
- s.39G. *Powers on production of documents*
- s.39H. *Order requiring supply of information and answers to questions*
- s.39U. *Rule against self-incrimination does not apply*
- s.39V. *Offence to give false or misleading information*
- s.39Z. *Production of information to Authority*
- s.39ZA *Rule against self-incrimination does not apply*
- s.42B. *False or misleading statements*

TT- Line Gambling Act 1993

ENTRY

As incidental to search powers

SEARCH

s.14. *Unlawful interference with gaming equipment*

SEIZURE

Not applicable

QUESTIONING

Not applicable

Veterinary Practice Act 1997

ENTRY

s.82. *Powers of entry with warrant*

s.83. *Announcement before entry*

s.84. *Copy of warrant to be given to occupier*

SEARCH

s.82. *Powers of entry with warrant*

s.83. *Announcement before entry*

s.84. *Copy of warrant to be given to occupier*

s.88. *Regulations*

SEIZURE

s.85. *Copies or receipts to be given*

s.88. *Regulations*

QUESTIONING

Not applicable

Water Industry Act 1994

ENTRY

- s.38. *Searches to monitor licensee compliance*
- s.39. *Occupier to be given copy of consent*

SEARCH

- s.38. *Searches to monitor licensee compliance*
- s.39. *Occupier to be given copy of consent*

SEIZURE

- s.41. *Use or seizure of electronic equipment at premises*
- s.42. *Copies to be given*
- s.43. *Return of seized things*
- s.44. *Magistrates' Court may extend period*
- s.48. *Samples*

QUESTIONING

- s.45. *Power of inspector to require information or documents*
- s.46. *Copying of documents*
- s.47. *Protection against self-incrimination*

Wildlife Act 1975

ENTRY

- s.16. Secretary to manage State Wildlife Reserves
- s.19. *Limitation of mining etc; on State Wildlife or Nature Reserves*
- s.59C. *Search warrant for evidence of offence*
- s.59D. *Announcement before entry*

SEARCH

- s.59. *Powers of authorised officers*
- s.59A. *Searches of personal property*
- s.59B: *Searches of vehicles and boats*
- s.59C: *Search warrant for evidence of offence*
- s.59E: *Copy of warrant to be given to occupier*
- s.59F: *Occupier entitled to be present during search*

SEIZURE

- s.48A: *Seizure of dogs or cats*
- s.48C: *Recovery or disposal of animal*
- s.49: *Power to make Order prohibiting possession etc. of certain wildlife*
- s.60: *Seizure of prohibited equipment etc.*
- s.60B: *Requirements as to taking samples, seizing*
- s.87: *Regulations*