

Office of Fair Trading

Entry, search and seizure policy

(includes stopping or moving a vehicle)

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1. Purpose

To outline Office of Fair Trading (OFT) inspector responsibilities when conducting entry, search and seizure of evidence during the course of their investigations.

2. Scope

This policy applies to all **OFT inspectors** appointed and authorised to engage in OFT compliance and enforcement activities.

This policy outlines what is legislatively required from inspectors when entering and searching a place or property as part of their functions and the legislative requirements associated with seizing exhibits or evidence associated with an OFT investigation.

This policy should be read in conjunction with the following OFT policy and procedures:

- *Compliance and enforcement policy*
- *Applying for and actioning a warrant procedure*
- *Evidence (exhibit) and property handling procedure*

This policy will be reviewed annually and/or after relevant legislative or procedural changes.

3. Legislative requirements

In the course of their duties inspectors will need to enter a place, conduct searches, seize items and take possession or make copies of records, documents or other materials as evidence.

Under Common Law, inspectors may legally approach and enter a place in order to conduct normal business and communication with an occupant. This is the entire extent of the Common Law authority to enter a premise.

Section 89 of the *Fair Trading Act 1989* (FTA) and part 4 of the *Fair Trading Inspectors Act 2014* (FTIA) administered by OFT provide powers for inspectors to enter a premise, search, seize and handle exhibits/evidence. Section 4 of the FTIA references the primary OFT Acts overarching the FTIA's provisions for powers of entry, search and seizure of evidence by inspectors.

Inspectors are required to be familiar with the powers prescribed in the FTA and FTIA as they apply to that Act and all primary OFT Acts prior to exercising those powers. Inspectors shall not exercise those powers unless authorised to do so.

4. Entry

Legislation administered by OFT varies in what conditions are placed on inspectors wishing to enter a place. For example power to enter may only be authorised:

- when a public place is open to the public
- with consent, or
- by warrant.

Inspectors will ensure they are aware of the statutory power to enter for the legislation under which they are operating.

Note: It is a requirement under the FTIA that an inspector must produce their identification before using or attempting to use any powers under the FTIA and relevant primary OFT Acts.

Inspectors must also consider the **risks associated with entry, search and seizure** and the safety of OFT officers and members of the public. Some basic **safety principles** are outlined in OFT's *Applying for and actioning a warrant procedure*.

4.1. Common Law authority

Entry to a place may be held to be lawful at Common Law where the entry is:

- required to enter land to approach a front door of a place for the purpose of conducting normal business and communications, or
- where the public has access generally, e.g. conducting trial or covert purchases as a member of the public where no powers are being exercised.

Note: Common Law authority extends **only to general enquiries** and not for the purposes of exercising powers under an Act. The authority is based on implied consent of the lawful occupier which can be removed by that person.

4.2. Consent authority

The FTIA states that prior to asking for consent to enter a property, inspectors must advise an occupier:

- the purpose of the entry
- the powers intended to be exercised following entry
- that consent may be given subject to conditions and withdrawn at any time, and
- that they are not required to consent.

Where the occupier consents to entry, inspectors must obtain evidence of the consent to enter and any conditions stipulated by the occupier as it will form part of the inspector's general powers of inspection after entering a place.

4.3. Warrants (search and monitoring warrants)

Legislation administered by OFT provides for inspectors to obtain warrants in certain circumstances. Most OFT legislation requires a Magistrate issue warrants. However, some OFT legislation allows for warrants to be issued by a Justice of the Peace.

Inspectors must be fully conversant with the requirements of the legislation under which they are working. The OFT's *Applying for and actioning a warrant procedure* provides instruction on obtaining a warrant.

4.4. Use of force

In some cases, legislation administered by OFT authorises the use of reasonable and necessary force in exercising a power, particularly regarding warrants. Where reasonably practical, before using force an inspector must:

- ask the occupier of the place to allow the inspector to enter the place and
- give the occupier a reasonable opportunity to allow the entry.

This also applies to gaining access to locked receptacles within a place after entry.

Where an inspector, or a person assisting an inspector, causes damage to a place or any receptacle therein, they shall as soon as practical after the entry and search, advise the inspector's manager of the circumstances. The FTIA provides for OFT's legislative requirements if damage is caused during the course of an inspector's function (See section 8 of this policy).

5. Search – powers after entry

Authority to search a place is available by statute or by consent. There is no Common Law authority to search another person's place or property for the purpose of exercising a power or function.

5.1. Consent authority

The authority to search by consent shall be dealt with in the same manner as consent authority to enter (see section 4.2).

5.2. Statutory authority

Legislation administered by OFT varies in what conditions are placed on inspectors wishing to search a place. Although an Act may authorise entry, it may only authorise the requirement to produce documents and not search.

Inspectors shall ensure they are conversant with the statutory power to search pursuant to the legislative purpose they are operating under.

5.3. General powers after entry

An inspector may:

- search any part of the place
- inspect, examine or film any part of the place
- take for examination a thing or sample from a thing
- place an identifying mark in or on anything
- take an extract from or copy a document at the place or take the document to another place to copy (must return or follow seizure procedures)
- produce an image or writing at the place from an electronic document or take a thing containing an electronic document to another place to produce an image or writing (must return or follow seizure procedures)
- take into or onto the place and use any person, equipment and materials reasonable required for exercising the powers
- remain at the place for the time necessary to achieve the purpose of the entry.

Under the FTIA, an inspector may use any person or equipment at the place in exercising a general power. This may include printers, photocopiers, forklifts, or any other machinery type.

Power to require reasonable help (FTIA only) – An inspector may make a requirement of an occupier or person of the place to give the inspector reasonable help to exercise a general power. It is an offence to contravene the help requirement.

The FTA also allows an inspector, for the purpose of gaining entry to any place, to call to the inspector's aid as the inspector considers necessary and such persons, while acting in aid of an inspector in the lawful exercise by the inspector of the inspector's power of entry, shall have a like power of entry.

6. Searching people

No officer from the OFT has authority to search a person. This includes statutory authority or authority of any management position. Searches of people should never be conducted under any circumstances by inspectors.

If there is a particular reason that a person is required to be searched, such as hiding vital evidence on their person, the Queensland Police Service (QPS) should be immediately contacted for assistance and the search may be conducted by a police officer if relevant statutory powers exist.

7. Seizure

Authority to seize items in a place is available by statute or by consent. There is no Common Law authority to seize another person's property for the purpose of exercising a power or function.

7.1. Consent authority

The authority to seize by consent shall be dealt with in the same manner as consent authority to enter and search (see section 4.2).

7.2. Statutory authority

Legislation administered by OFT varies in what conditions are placed on inspectors wishing to seize evidence. Although an Act may authorise entry and search, it may only authorise the seizing of evidence if it is reasonably suspected of being destroyed or used in the continuance or repetition of an offence.

Inspectors must be conversant with the statutory power to search relevant to the legislative purpose they are operating under.

If entering with a warrant the inspector may also seize anything else at the place if it is evidence, or has been used in committing an offence, or the seizure is necessary to prevent the thing being hidden, lost or destroyed.

It is **offence under FTIA to interfere** with a seized thing. If a thing is seized and access restricted, a person must not access a restricted place or tamper with a seized thing, or with anything used to restrict access to the thing, without the inspector's approval or without a reasonable excuse.

8. Obstruction or damage

Under the FTA and the FTIA a person must not obstruct an inspector exercising a power (includes assault, hinder, resist, attempt to obstruct and threaten to obstruct), or someone helping an inspector exercising a power, unless the person has a reasonable excuse.

If a thing is damaged by an inspector during exercising of the inspector's powers then a record of the damage must be made regardless of the value or condition of the thing. If applicable, the inspector may also be required to issue a damage notice to the owner of the thing.

The *Evidence (exhibit) and property handling procedure* provides inspectors with instruction on handling situations of obstruction or damage during seizure.

9. Power to stop or move a vehicle

The FTIA provides inspectors with certain powers under the FTIA or a primary OFT Act, to stop or move vehicles if they reasonably suspect or are aware, that a thing in or on a vehicle may provide evidence of an offence.

9.1. Stopping a moving vehicle

The FTIA provides inspectors with the power to stop vehicles in specified situations. However, **administratively**, inspectors **are not** to direct a person in control of a moving vehicle to stop. If it is necessary to stop a moving vehicle, inspectors are to request QPS assistance to stop a moving vehicle.

9.2. Moving a vehicle

The FTIA provides inspectors the power to direct the person in control of a stationary vehicle for the vehicle to remain in a specified location, or to move the vehicle to a different specified location, for the purpose of exercising the functions/powers of an inspector.

Inspectors are required to immediately identify themselves as inspectors and produce their identification card for the inspection of the person in control of the vehicle and provide a warning that the person must comply with the vehicle moving requirement.

10. Receipting of seized thing

Unless subject to delay provisions under the FTIA, the inspector, as soon as practical after seizing the thing/s, must give an owner or person in control of the thing/s a receipt generally describing the thing/s and its condition and an information notice about this decision to seize the thing/s.

If the owner or person of the thing/s seized is not present at the time of seizure, the receipt and information notice may be left in a conspicuous place and in a reasonably secure way at the place at which the thing/s was seized.

11. Processing evidence seized

Inspectors must adhere to internal procedures under the OFT's *Evidence (exhibit) and property handling procedure* which provides strict procedures for, but not limited to:

- handling and transporting evidence
- impounding evidence
- storing evidence
- recording transfers of custody
- returning, delivery and disposal of evidence
- access to the evidence room and or exhibit facility
- inspections of the evidence room.