

## 6.3 Your powers under the *Customs Act 1901*

### What is the *Customs Act 1901*?

The *Customs Act 1901* (the Act) is a Commonwealth Act designed to regulate the passage of goods and people into and out of Australia.

The intention is to prevent:

- importation of prohibited goods, such as illegal drugs, weapons or wildlife
- entry of illegal immigrants
- unauthorised entry or departure of criminals
- entry of pests and diseases.

### Why would an order for an external search be requested?

A Detention Officer (the officer) from Australian Border Force may apply to you for approval to carry out an external search. This may include, but not limited to, a person who either:

- is in need of protection, such as a child or an intellectually impaired adult
- refuses to consent to a frisk search
- refuses to produce any goods located during a frisk search.

### How do I issue an application for an external search?

You may be contacted by an officer to hear an application for an order for an external search of a person.

The application is an approved form and is in two parts:

1. Application – information required to substantiate the issuing of the order such as whether the person refused to submit to a frisk search, refused to produce a thing required to be produced as a result of the frisk search, is a person ‘in need of protection’ or refused or has not consented to an external search.
2. Order – provides details of the person to be searched and the officer suspects the person is unlawfully carrying prohibited items on their body and the person is either ‘in need of protection’, has refused to submit to a frisk search, refused to produce a thing as a result of a frisk search or has not consented to an external search.

The process for issuing the order under this Act is very similar to issuing a warrant or order under the *Police Powers and Responsibilities Act 2000*, in that the application must be sworn or affirmed and state the grounds on which the order is sought.

Before issuing the order you must be satisfied there are reasonable grounds to suspect the person is unlawfully carrying prohibited goods on their body and they:

- are a person ‘in need of protection’
- refused to submit to a frisk search
- refused to produce anything located during a frisk search
- have not consented to the external search.

The officer must provide reasonable grounds in the application to substantiate the issuing of the order. If you are not satisfied there are reasonable grounds from the information provided to you, you must refuse to witness the application and state your reasons on it.

## Part 1 – Application

Follow the general procedure for witnessing signatures as outlined in chapter 4.1 then:

1. Warn the applicant at the outset, and check they understand that if they knowingly provide information in the application and they know the information is false, they commit an offence.

Ensure the applicant understands that making an oath or affirmation is a solemn matter.

2. Immediately place the applicant on oath or affirmation as outlined in chapter 4.6.
3. Read the entire application carefully. This is one of the many occasions when you must read the entire document and would be failing in your duty if you did not. Check it gives:
  - the name of the applicant
  - location where the applicant is made
  - the officer's level and that they are a Detention Officer
  - details of the person detained
  - reason(s) the person was detained and why the applicant suspects the person is unlawfully carrying prohibited goods.
4. If needed, ask the applicant questions to clarify why the order is necessary. Do this separately from the person.
5. Speak to the person to establish their understanding of why they have been detained.
6. If you are satisfied the order is justified, have the applicant sign the application, reminding them they are under oath or affirmation.

If you are not satisfied the application is justified, and you refuse to issue the order for an external search of a person, you should:

- cross out the application and note your reasons on the form
  - note on the order the person be immediately released from detention
  - note your reasons in your logbook.
7. Witness the applicant's signature. Affix your seal of office and enter your registration number. This is a requirement of the *Justices of the Peace and Commissioners for Declarations Act 1991*. If required, insert your full name, location and/or date.
  8. Ensure you retain the original application for an external search and keep it in a secure place. This is one of the few occasions where you are required to retain a document.

## Part 2 – Order for an external search

1. Check the order to ensure it:
  - gives the name of the applicant
  - gives the name of the person being detained and whether they:
    - are a person 'in need of protection'
    - have refused to submit to a frisk search
    - have refused to produce anything located during the frisk
    - have not consented to the external search.
  - is dated the day you sign it.
2. Sign the order. Affix your seal of office and enter your registration number. This is a requirement under the *Justices of the Peace and Commissioners for Declarations Act 1991*. If required, insert your full name, location and/or date.
3. Return the order to the applicant. There is no requirement for you to retain a copy of it.
4. Record all relevant information in your logbook as outlined in chapter 2.4.

## Things to bear in mind

The officer may take into consideration a wide variety of matters when determining reasonable grounds of suspicion, such as:

- the person's travel itinerary, including plans in relation to places that have been visited or are intended to be visited by the person
- interest of Customs Drug Detector Dogs
- arrival or departure declarations or statements (made under Commonwealth law)
- documents in the person's possession, or produced by the person, or the refusal or failure to produce documents
- unusual behaviour by the person
- the contents of or appearance of any visible item carried by the person or the person's luggage (whether or not carried by the person)
- the answers given by the person, or their failure to answer questions.

As a JP you may also be requested to:

- issue a summons as outlined in chapter 5.1
- constitute a Magistrates Court and determine a bail application for a person charged with an offence under this Act as outlined in chapter 6.5.

## Frequently asked questions

### What is the definition of an external search?

External search means a search of the body of a person and of anything they are wearing or have in their possession to:

- determine if the person is carrying any prohibited goods
- recover any such goods.

It does not include an internal examination of the person's body.

### What is a frisk search?

The officer may carry out a frisk search of the person that entails:

- a search of a person conducted by quickly running hands over a person's outer garments
- an examination of anything worn or carried by a person that is conveniently and voluntarily removed by the person.

## Where can I get more information?

Department of Home Affairs

[www.border.gov.au](http://www.border.gov.au)

## 6.3 Quick guide

### Your powers under the *Customs Act 1901*

#### Application

Follow the general procedure for witnessing signatures as outlined in chapter 4.1 then:

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- ① Warn the signatory that if they knowingly make a false application, they commit an offence.  
Ensure the applicant understands swearing an oath or making an affirmation is a solemn matter.

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  - ② Immediately place the applicant on oath or affirmation as outlined in chapter 4.6.

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  - ③ Read the application and check it gives:
    - the name of the applicant officer
    - the location where the application is made
    - the officer's level and that they are a Detention Officer
    - the details of the person detained
    - the reason the person was detained and why the applicant suspects the person is unlawfully carrying prohibited goods.

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  - ④ If needed, ask the applicant questions to clarify why the order is necessary. Do this separately from the person.

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  - ⑤ Speak to the person to establish their understanding of why they have been detained.

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  - ⑥ If you are satisfied the order is justified, have the applicant sign the application, reminding them they are under oath or affirmation.  
If you are not satisfied the application is justified, and you refuse to issue the order:
    - cross out the application and note your reasons on the form
    - note on the order the person be immediately released from detention
    - note your reasons in your logbook.

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  - ⑦ Witness the applicant's signature. Affix your seal of office and enter your registration number. This is a requirement of the *Justices of the Peace and Commissioners for Declarations Act 1991*. If required, insert your full name, location and/or date.

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  - ⑧ Retain the original of the application and keep it in a secure place.

#### Order for an external search

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- Check the order gives:
- ①
    - the details of the applicant
    - the name of the person being detained
    - the reason they are being detained.

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  - ② Sign the order. Affix your seal of office, enter your registration number and the date and time the order ends. This is a requirement under the *Justices of the Peace and Commissioners for Declarations Act 1991*. If required, insert your full name, location and/or date.

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  - ③ Return the order to the applicant. There is no requirement for you to retain a copy of the order.

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  - ④ Record all relevant information in your logbook as outlined in chapter 2.4.
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