

## BIOSECURITY AND TRESPASS-Notes and Prompts

**“equity does not aid the indolent” is a legal maxim that means that a court of equity will not provide relief to a party who has been negligent or inactive in enforcing their legal rights....its up to us...**

**Put up your No Trespass Signs in clear view;**

**If someone enters your property ask them to leave immediately and inform them they are trespassing and will be prosecuted if they don't remove themselves;**

**Reasonable force can be used as a last resort to remove a trespasser from your property should they not remove themselves;**

**In *Romani v State of New South Wales* 07 Feb 2023 the Plaintiff sued the trespassers and was awarded damages; the trespassers were on the property for only around 3 minutes;**

**Council often come with police to enforce their intrusion-Remember-Police are to only involve themselves in criminal matters not civil;**

**Its up to you to know your Rights and the Law;**

<https://www.agriculture.gov.au/biosecurity-trade/policy/legislation/biosecurity-legislation>

<https://rous.nsw.gov.au/legal-obligations-as-landholders>

Excerpt from the above link....Bold emphasis and italicised comments added;

### **"Weeds - a shared responsibility**

Every homeowner, landowner, occupier or person(s) leasing or renting properties must be aware of their obligations (*who creates these obligations?*) to control weeds (*who determines what weeds are?*). The Biosecurity Act 2015 does not discriminate between rural or residential properties; nor between landholders who utilise their property for agricultural or recreational purposes.

All occupiers of land must manage weeds. The person who has the care, control and use of the land is the occupier and is responsible for the control of weeds according to Council's local weed management plan. (*where does their authority come from to determine their weed management plan?*) Owner/occupiers of land may also have weed control responsibilities on adjacent watercourses, roads or lanes if there is no fence delineating the boundary. Landholders can consult the Biosecurity Act 2015 or enquire at their local Council office to determine any additional responsibilities. (*Who do we take our orders from??*)

A landholder who fails to control priority weeds as required by local and regional strategic weed management plans may be liable for heavy penalties."

### **Some questions we need to ask...should we be bullied or coerced...**

**Who** has made a complaint about what??? what weeds etc? For them to visit or want to come onto our property.

**What evidence** has been provided to substantiate the "complaint" to warrant any interaction...

**When was the complaint made???**

All because a "somebody", and individual, an agent working for a corporation or "Council" have concerns or worries or an "Act" they refer to...DOES NOT GIVE THEM free reign to do what they like.

How can we be assured? Always we should be concerned having strangers come onto our property...who are these people connected with? How do we know these agents don't pass onto to certain others information about y/our property...what "stuff" you have on it...whether your property appears secured or not? Easy pickings?? One must be diligent in protecting their privacy and property..that...is your Obligation to yourself....**if their is no valid warrant, exigent circumstances or permission...STAY AWAY! Simple aint it?**

We ALL have the right to not just "defend" ourselves but to PROTECT ourselves from any harm...or intrusion.

"The Department of Health has policy and operational carriage of this power, however biosecurity officers have the power to ask questions (anyone has the power to ask questions-we however are not obligated at law to solicit information that may be to our prejudice-we have the right to remain silent) and/or require written information to be provided by individuals within a human biosecurity response zone." (again, **subjective**)

<https://www.agriculture.gov.au/biosecurity-trade/policy/legislation/biosecurity-legislation#daff-page-main>

### **Biosecurity Emergencies**

"The Governor-General can declare a biosecurity emergency when the Agriculture Minister is satisfied a disease or pest poses a severe and immediate threat or harm on a nationally significant scale to animal or plant health, the environment or related economic activities". (EVIDENCE IS REQUIRED)

Emergency powers will only be used in limited circumstances to manage biosecurity risk on a nationally significant scale:

where the response exceeds the capability of state, territory and Commonwealth powers

where a rapid, nationally consistent response is required to manage a severe and immediate threat.

During a biosecurity emergency the Agriculture Minister may decide to put in place requirements to prevent or control the establishment or spread of the disease or pest.

#### **Requirements may include:**

specifying entry and exit conditions for people, goods and conveyances

restricting movement between specified places

evacuation or removal of goods from specified places

treatment or destruction of goods

a direction not to move/interfere with or deal with goods or conveyances.

closing or restricting access to a premises.

The details of the requirements will depend on the nature and scale of the biosecurity risk associated with the disease or pest, and its location within Australian territory.”

Take notice of the continual use of the word "may"...read from "**Division 2—Making, varying and revoking biosecurity**

### **control orders**

#### **353 Director of Biosecurity may make biosecurity control order to**

manage unacceptable level of biosecurity risk".....Really....this is what they have given themselves consent to do...They must provide written evidence...and if that evidence is unsubstantiated...then there is a problem for them...We however have lawful right to contest or not "comply" and have revoked any of their "orders" should they not be able to substantiate their claim to do what they are doing and they can be sued for a breach of peace and or trespass. Where is the threat, where is the victim? Common sense...and sure..if there be a genuine "biosecurity threat" with evidence...and without causing a violation as to our liberties then generally folk would not have an issue...

#### **361 Exercise of powers in premises**

(1) A biosecurity officer or a biosecurity enforcement officer may enter any premises in Australian territory for the purpose of exercising powers in accordance with section 360.

Note: Premises include a conveyance (see paragraph (a) of the definition of premises in section 9).

(2) However, **an officer is not authorised to enter premises under subsection (1) unless:**(a) **the occupier of the premises has consented to the entry and the officer has shown his or her identity card if required by the occupier; or**  
**(b) the entry is made under a biosecurity control order warrant.**

#### **380 Exercise of powers in premises**

(1) A biosecurity officer or a biosecurity enforcement officer may enter premises in a permanent biosecurity monitoring zone for the purpose of exercising powers in accordance with section 379.

Note: Premises include a conveyance (see paragraph (a) of the definition of premises in section 9).

(2) However, **an officer is not authorised to enter premises under**

subsection (1) unless:

(a) the occupier of the premises has consented to the entry and the officer has shown his or her identity card if required by the occupier; or

(b) the entry is made under a biosecurity monitoring zone warrant.

#### TAKE CAREFUL NOTE

According to the Biosecurity Act 2015, **an issuing officer can issue a Biosecurity Risk Assessment Warrant if satisfied, by information provided on oath or affirmation, that there are reasonable grounds for suspecting** (*We really need to understand at law "suspect"-it isnt a free for all*) **there is a biosecurity risk on the premises.**

The specific legal protocols are:

**A biosecurity enforcement officer must apply to an issuing officer (a magistrate or eligible AAT member) for a Biosecurity Risk Assessment Warrant.**

**The information supporting the application must be sworn or affirmed by a biosecurity officer.**

The issuing officer must be satisfied, based on the sworn/affirmed information, that there are reasonable grounds for suspecting a biosecurity risk is present on the premises. A "biosecurity risk" is defined as the likelihood of a disease or pest entering, establishing or spreading, and the potential harm this could cause.

The issuing officer may require the biosecurity officer or other person to provide further oral or written information concerning the grounds for seeking the warrant.

So in summary, **an independent issuing officer must be convinced by sworn evidence that there is a reasonable suspicion of a biosecurity threat on the premises before granting this type of entry warrant.**

THE ABOVE MEANS...No agent can willy nilly come onto your property based on a routine check or hunch..."suspicion"...they MUST go through the proper legal protocol...must have reasonable grounds and must swear/affirm on oath.

So this means ....if they dont do it right...then they can and should be sued for damages....should they breach our peace and or trespass. SIMPLE. They need to make reparation for their actions against us...Problem is...most folk are too lazy to do this and so many are violated.

**This process ensures biosecurity warrants can only be issued by an independent authority after careful verification that sufficient grounds have been properly established, preventing the unrestricted use of the extraordinary powers they provide.**

## SUSPICION

Now lets explore "suspicion"

'Reasonable suspicion' is a common threshold for the **state of mind required before a judicial officer may issue a warrant** authorising the use of coercive or **intrusive** powers to gather evidence. (Problem right there...to gather evidence?...so many have in good faith allowed agents onto their property for one specific matter to then be slammed with fines for other matters observed by those agents whilst on their property-unlawful).

The common law on this test is reasonably well settled. 🙌🙌 **"[I]t must appear to the issuing justice, not merely to the person seeking the search warrant, that reasonable grounds for the relevant suspicion and belief exist"**. "It follows that the issuing justice needs to be satisfied that there are sufficient grounds reasonably to induce that state of mind". In this way, reasonable suspicion incorporates both a **subjective** and **objective assessment** of that state of mind.

<https://lawcouncil.au/resources/submissions/commonwealth-integrity-commission-reasonable-suspicion-thresholds>

### Reasonable Suspicion

*George v Rockett* - [1990] HCA 26 - 170 CLR 104 The justice must be satisfied that there are reasonable grounds for suspecting that "there is in any house, vessel, vehicle, aircraft, or place - **Anything**" and that there are reasonable grounds for **believing** that the **thing** "will ... **afford evidence** as to the commission of any offence". (includes biosecurity "things")

**Suspicion**, as Lord Devlin said in *Hussien v. Chong Fook Kam* (1970) AC 942 , at p 948, "**in its ordinary meaning is a state of conjecture or surmise where proof is lacking**: 'I suspect but I cannot prove.'" The facts which can reasonably ground a suspicion may be quite insufficient reasonably to ground a belief, yet **some factual basis for the suspicion must be shown**. In *Queensland Bacon Pty. Ltd. v. Rees* (1966) 115 CLR 266 , a question was raised as to whether a payee had reason to suspect that the payer, a debtor, "was unable to pay (its) debts as they became due" as that phrase was used in s. 95(4) of the Bankruptcy Act 1924 (Cth) . Kitto J. said (at p 303):

**"A suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to 'a slight opinion, but without sufficient evidence',**

<https://www.ato.gov.au/law/view/document?DocID=JUD%2F1990HCA26%2F00001#:~:text=The%20justice%20must%20be%20satisfied,the%20commission%20of%20any%20offence%22.>