

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 the:

- 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.

Officers of the Australian Border Force enforce the Act. The Act gives them the power to search and detain suspects and to seize goods.

Why does this Act concern me as a JP?

A JP (Qual) has limited powers in relation to the *Customs Act*. Under this Act you may:

- determine an application for an external body search of a person detained under the same Act
- issue a summons
- constitute a Magistrates Court and determine a bail application for a person charged with an offence under this Act.

Note: You may not:

- issue a search warrant under this Act (only a magistrate or a JP employed in a court may do this)
- make or extend a detention period under this Act (only a magistrate may do this)
- authorise an internal search of a person detained under this Act (only a judge or a magistrate may make this order).

Under the *Customs Act 1901*, an officer has the power to detain a person if they are suspected, on reasonable grounds, of carrying prohibited goods. The officer may carry out a frisk search of the person that entails:

- a quick search of the person by the rapid and methodical running of hands over the person's outer garments
- an examination of anything worn by the person that can be conveniently and voluntarily removed by the person.

An officer may also apply to you for approval to carry out an external body search of a person who:

- 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.

The Australian Border Force maintains a register of JPs who live or work in the vicinity of international points of entry and who have indicated their willingness to undertake this role. It carries out specific training for this role from time to time, and normally only calls upon people who have undertaken the course. However, the time may come when you are called upon to undertake this role.

The person being detained is given a notice informing them of their rights, including the right to ask for a JP to adjudicate on the application for an external search.

Though applications can be made to the Chief Executive Officer of the Australian Border Force, an officer authorised by that Chief Executive Officer or a JP, the current practice for the Australian Border Force is to make the application to a JP.

The officer makes the application. It must be made in writing and taken under oath or affirmation.

An application may be made to you for any of these reasons:

- the officer suspects on reasonable grounds a person is carrying prohibited goods
- the officer is of the opinion the person is in need of protection
- the detainee refuses to consent to the body search
- the detainee refuses to produce a thing required to be produced during the body search.

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
- 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.

How do I deal with an application for an external body search?

You should talk to the officer and the suspect separately (if possible).

1. Ask the applicant for some form of identification.
2. Place the officer on oath or affirmation.
3. Read through the application carefully. Ensure there are reasonable grounds for the suspicion.
4. Ask any questions of the officer that are necessary to clarify any points.
5. Talk to the suspect and ensure they understand what is going on. Ask the suspect if there are any reasonable grounds for them to be carrying 'suspicious' items. The suspect may be able to provide a satisfactory explanation for factors that led to the officer's suspicions.
6. Decide whether or not to grant the application. When considering the application, you must determine if there are reasonable grounds for the suspicion. (Consider the same factors as the officer is required to take into account.)

If you decide to grant the application, you should order the external search to be carried out by granting the application. Do this by writing on the bottom of the application provided by the officer. Ensure you keep a copy of the officer's application, any other information provided and your approval for the search to be conducted. Make the necessary entry in your logbook as well.

If you believe the suspect is in some need of protection, you must order the search be carried out in the presence of the suspect's legal guardian or a specified person (not a border force officer or police officer). This person must be able to represent the suspect's interests and also be acceptable to the suspect.

If you do not consider the search is justified, you must order the suspect be immediately released.

7. Enter the details in your logbook. Information that can be entered includes:

- date and time the document was witnessed
- type of application
- details of the person requesting the order
- type of identification sighted
- location of signing
- questions you asked and answers given.

Frequently asked questions

What is the definition of an external body search?

External body 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
- to recover any such goods.

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

Where can I get more information?

Department of Immigration and Border Protection
www.border.gov.au

Quick guide

Follow these steps to approve an application for an external body search

- ① Ask the officer for identification.
- ② Place the officer on oath or affirmation.
- ③ Carefully read the application to ensure there are reasonable grounds for suspicion.
- ④ Ask questions to clarify.
- ⑤ Talk to the suspect and ensure they understand why they have been detained. Ask if there are any reasonable grounds for them to be carrying 'suspicious' items. The suspect may be able to provide a satisfactory explanation.
- ⑥ Determine if there are reasonable grounds for suspicion and decide whether or not to grant the application.
- ⑦ To grant the application, write on the bottom of the application. Keep a copy of the application, other information and your approval, and include this in your logbook.
- ⑧ If you believe the suspect needs protection, order the search to be carried out before a legal guardian or a person who can represent the suspect and the suspect approves of (not a border force or police officer).
- ⑨ If you do not believe the search is justified, order the suspect be immediately released.
- ⑩ Enter the relevant details in your logbook.