



AUSTRALIAN CUSTOMS NOTICE NO. 2010/10

Customs and Border Protection Officers' Power to Enter and Remain In Certain Places

In the course of their duties, Australian Customs and Border Protection Service officers (and persons assisting an officer) will be required to access certain places to carry out their role as Commonwealth law enforcement officers. An officer's power to enter and remain in certain places is granted through the operation of various legislative instruments, in particular through Section 193 of the *Customs Act 1901*. This Notice provides advice on the places/locations officers may access, equipment they may carry, how officers will enforce these powers and what obligations (if any) are placed upon the occupiers (including owners and operators) of these places.

What status do Customs and Border Protection officers hold?

Officers of the Australian Customs and Border Protection Service are law enforcement officers through the operation of a range of legislative instruments, in particular *Division 146.1 of the Criminal Code Act 1995*, Section 3 of the *Crimes Act 1914* and Section 151 of the *Maritime Transport and Offshore Facilities Security Act 2003 (MTOFSA)*.

What places can officers access?

Officers can enter and remain in the following places (whether they are public areas or privately owned), without the need for a warrant or the permission of the relevant owner, occupier or operator:

- the coast, including but not limited to:
 - the shores, banks and beaches of the coast;
 - any man-made structure in or on the coast;
- a port, bay or harbour, including but not limited to:
 - the shores, banks and beaches of the port, bay or harbour;
 - any man-made structure in or on the port, bay or harbour;
- an airport or airstrip;
- a lake or river, including but not limited to:
 - the shores, banks and beaches of the lake or river;
 - any man-made structure in or on the lake or river;
- for the purpose of entering and remaining upon a place mentioned above - an area of land or water that is adjacent to that place.

When in these places, officers will be completing a range of border protection (and associated) activities, including the boarding of ships and aircraft and exercising their powers to search goods, people, vehicles, ships and aircraft.

What about places where regular or ongoing access is required e.g. ports, wharves, etc?

Where officers have identified an ongoing requirement to access certain places they will establish contact with occupants to identify a reasonable means of regular access to that place. In most cases this will require occupants to provide officers with the appropriate 'swipe-cards', keys or other relevant access device to enable immediate access to places as operational requirements dictate.

Are officers required to comply with any 'conditions-of-entry' (e.g. providing personal information, personal or vehicle search, etc) that occupants may normally require of people entering a particular place?

No. Officers are not required to comply with any 'conditions-of-entry' that may normally apply to people entering a particular place.

Officers will not be subject to any screening process and will not subject themselves, their personal items/equipment or vehicles to any search or screening activities. In maritime environments officer's are specifically exempt screening by the relevant provisions of MTOFSA. Where screening is required under Commonwealth legislation (e.g. security screening at airports), officers will comply as required.

Furthermore, officers will not provide any personal information that may identify themselves beyond their official Customs and Border Protection staff ID number, which is provided on their photographic Identity Card.

What about safety issues at these places?

All operational activity undertaken by officers at these places is consistent with the *Occupational Health and Safety Act 1991* and any relevant Customs and Border Protection Occupational Health and Safety Management Arrangements (HSMA) Practice Statements and associated Instructions and Guidelines. It should be noted that as this is Commonwealth legislation it will generally override any equivalent state/territory legislation. Officers are required to wear appropriate Personal Protective Equipment (PPE) as required by the relevant Customs and Border Protection guidelines.

As a general principle, officers will seek to comply with the minimum PPE requirements as identified by the relevant occupants of a particular place. However, in extreme cases, this may not always be possible, primarily due to a competing operational safety risk identified by officers at that place. In these cases, officers will seek to mitigate risks through other means consistent with Customs and Border Protection occupational health and safety policy.

Where a particular place (e.g. port facility) has its own site safety induction/briefing process, officers with an ongoing or regular requirement to access that place will make themselves available to complete an initial relevant site safety induction/briefing provided by the occupant – as determined appropriate by the local Customs and Border Protection Manager. The Manager will determine when attendance at such a induction/briefing is required to be repeated depending on operating arrangements at the time and after discussion with the relevant occupants.

In some cases officers may be required to access the site prior to having undertaken the site safety induction/briefing. Where this occurs officers will attend the place in the company of an officer who has completed the relevant safety induction/briefing or if this is not possible receive a safety briefing from an officer who has completed one previously.

Will officers be subject to any alcohol and drug testing policy or processes?

No. Under no circumstances will any officers be subject to any alcohol or drug testing that may be employed by occupants of places accessed in the course of their duties. This includes random testing on-site or the production of personal medical information of any type.

What will happen if officers are unable to access these places?

As a matter of general practice, officers will seek to obtain the consent and assistance of the owner, occupier or operator of these places to facilitate their entry. However, if consent cannot be obtained, officers are empowered to use reasonable means, including reasonable force to gain entry by force (e.g. removing a padlock, opening a gate or removing a section of a fence). It must be noted that operational flexibility is required and in certain circumstances there may be an operational imperative for officers to enter a place without prior notification to the owner/occupier/operator. It is anticipated that the circumstances requiring such action would be rare.

What obligations are placed upon occupants of these places?

Occupants (including owners and operators) at these places are required to provide officers with all reasonable facilities and assistance, including means of access (e.g. swipe cards, keys, etc) to the place that the person is reasonably capable of providing. It should be noted that failure to do so may constitute an offence under Section 193(2) of the *Customs Act 1901*, in addition any obstruction or hindrance of an officer in the course of their duties may be considered an offence under Division 149.1 of the *Criminal Code 1995*.

Will officers entering these places be armed?

Yes. An Operational Safety Risk Management Framework has been developed to identify and manage risks related to officer safety and will guide the deployment of staff with Personal Defensive Equipment (PDE). In most cases this means that officers entering and remaining in these places will be deploying with the full range of PDE. Currently PDE issued to officers includes the following items: ballistic vests, handcuffs, extendable baton, OC (Oleoresin Capsicum) spray and a Glock 17 pistol. Officers do not deploy with 'Tazers' or similar electrical devices.

PDE is issued to officers as a component of the overall Customs and Border Protection operational safety training regime, which incorporates a range of training initiatives (including de-escalation and self-defense) as well as stringent medical, psychometric and fitness standards for officers. The training is focused on providing officers with a personal defensive capability for all relevant Customs and Border Protection work areas, and as such the deployment of officers with PDE should be seen as a completely routine activity and should not be construed as an offensive measure.

All officers deploying with PDE are authorised to do so through Section 189A of the *Customs Act 1901* and *CEO Order 1*. Officers deploying with PDE have completed a full Customs and Border Protection Use of Force training course and been issued with a Use of Force permit (subject to an annual recertification process) certifying their competence to deploy with PDE. This training has been developed in adherence with the *National Guidelines for Incident Management, Conflict Resolution and Use of Force (Australasian Centre For Policing Research 2004)* and in close consultation with the Australian Federal Police.

What safety precautions will officers employ when entering hazardous places (e.g. fuel refineries, gas facilities, etc) while armed?

Officers entering hazardous sites will deploy with PDE where there is an operational need to do so. However, to minimise risks, officers will take account of the specific hazards present in the location and adopt the following operating principles:

- Minimal travel at the site and avoidance where possible of high risk locations within the facility.
- Minimal handling of PDE within the facility unless required to be deployed as per Customs and Border Protection Use Of Force guidelines.
- Where the activity being undertaken does not require PDE officers will not deploy with PDE.

Under no circumstances will officers surrender their PDE or leave it in the possession of another person.

Will officers bring other equipment with them when they access these places?

Yes. In order to carry out the full range of border protection activities, officers may deploy with a range of operational equipment, including communications equipment, detection technologies and assorted examination equipment. Officers are responsible for ensuring this equipment meets all safety standards as per Customs and Border Protection Health Safety arrangements. For more specific information please refer to the '*Carriage Of Operational Equipment By Officers of the Australian Customs and Border Protection Service*' Fact Sheet.

Will specific arrangements apply to any particular types of places?

Yes. Officers have been provided with specific instructions in relation to accessing the following types of places:

- Waterfront areas
- Petroleum (and other hydrocarbon) facilities
- Australian Defence Force facilities and assets
- Remote indigenous communities
- Foreign naval vessels
- Regulated airports
- Lock-up, detention or court facilities.

Customs and Border Protection would like to recognise that successful border security outcomes are maximized through the ongoing cooperation of the owner, occupiers and operators of these locations.

Inquiries concerning this notice may be directed to Director Seaports, Enforcement Operations on telephone number (02) 6245 5431 or fax number (02) 6275 6409.

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CARRIAGE OF OPERATIONAL EQUIPMENT BY OFFICERS OF THE AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE

This fact sheet is to be read in conjunction with the *'Australian Customs Notice No. 2010/10 - Customs and Border Protection Officers' Powers to Enter and Remain in Certain Places'*. This Fact Sheet provides more specific details regarding operational equipment, including Personal Defensive Equipment (PDE), carried by officers in the course of their duties.

1. When did Customs and Border Protection begin arming officers around Australia?

Officers in the Customs and Border Protection Marine Unit have been trained in Use of Force and armed with PDE since September 2005. In November 2005, the then Government announced that Customs and Border Protection would extend Use of Force training to officers involved in waterfront patrol and response work, ship boarding and search and certain Investigations operations.

2. Why are officers armed?

The decision to issue officers with Personal Defensive Equipment (PDE) including weapons and other defensive equipment is an operational safety measure in response to heightened security risks associated with the environment in which Customs and Border Protection operates.

Customs and Border Protection officers must be equipped to handle whatever situations arise during operations and when illegal activities are detected at the border. Officers carry out many border protection functions at wharves and remote locations, execute search warrants and board and search vessels in sometimes hostile environments and have been provided with training and equipment that will enable them to defend themselves should the need arise. For this purpose, trained officers are issued with ballistic vests, batons, capsicum spray, handcuffs and handguns for self-defence purposes.

3. Who will be armed?

Officers will carry PDE when undertaking duties assessed as posing some risk to their personal safety. An Operational Safety Risk Management Framework has been developed to identify and manage risks related to officer safety and will guide the deployment of staff with PDE. It is likely that in most cases officers attending for enforcement related duties will carry the full range of PDE.

4. What training do officers undertake?

All Customs and Border Protection officers undertaking Use of Force training are required to undergo and pass medical, psychometric and fitness testing. They then undertake an intensive training course involving theory and practical assessment in the use of self-defence techniques, batons, capsicum spray and firearms to the same standard as Australian Federal Police (AFP Officers). Once they have completed their training and passed all components to the level required, officers are issued a Use of Force permit – allowing them to be issued with and deploy with PDE in the operational environment. Customs and Border Protection officers also undergo Use of Force Recertification training every 12 months.

5. When weapons are carried, are these limited to hand-guns or are other weapons carried?

Only handguns (currently a Glock pistol) will be routinely carried by Customs and Border Protection officers undertaking clearance of vessels and other operational activity. It should be noted that other items of PDE carried will include: handcuffs, batons, OC (capsicum) spray and ballistic vests. The OC spray is in aerosol form and there are no electrical components in these units. Officers do not deploy with 'tazers' or similar electrical devices. The ammunition used in the handgun is a Jacketed Hollow Point (JHP) round. This is the AFP standard operational ammunition. The JHP is designed to deform on impact, minimising penetration and ricochet.

6. Are hand-gun holsters fully enclosed such that accidental contact by the hand-gun itself with another metallic object is prevented that may otherwise generate a spark?

The holsters issued by Customs and Border Protection fully enclose the trigger and trigger-guard of the pistol. Most of the pistol left exposed from the holster is of polymer construction.

7. What training is provided to ensure that officers fully understand the risk posed by such weapons accidentally coming into contact with other metal work or being accidentally discharged?

Customs and Border Protection firearms training ensures the most stringent levels of safe handling. Customs and Border Protection officers employed on the waterfront are fully conversant with the dangers posed by their workplace and will manage incidents in such a way as to minimise danger to all concerned.

8. In what 'state' is the weapon carried by officers?

Customs and Border Protection officers are required to carry their side-arms in the 'actioned' condition, that is, with a magazine containing rounds in the weapon, bullet chambered and working parts cocked. This minimises the time it takes an officer to draw and fire his/her weapon should it be required to defend themselves. This practice has been adopted following consultation and advice from other state policing agencies and the AFP. The Glock pistol does not rely on a manually operated external safety catch, having instead three internal safety mechanisms which ensure that the pistol cannot fire unless the trigger is squeezed.

9. In the unlikely event where an incident involving their weapons occurs, are the officers trained to recognize that discharge of their weapons on or in the vicinity of hydrocarbon facilities and vessels could instigate a hazardous incident?

Customs and Border Protection firearms training ensures the most stringent levels of safe handling. Officers employed on the waterfront are fully conversant with the dangers posed by their workplace and will generally have completed a relevant site safety briefing/induction. As a result they are trained to manage incidents in such a way as to minimise danger to all concerned.

10. What steps are taken to refresh/reinforce the initial safety training to ensure ongoing vigilance?

Customs and Border Protection officers undertake an annual recertification in all Use Of Force training elements, including use of the handgun as well as self defence and use of other PDE equipment. Officers not completing this recertification process will have their Use Of Force permit suspended and will be unable to deploy with PDE until such time as they have requalified.

Customs and Border Protection would like to recognise that successful border security outcomes are maximized through the ongoing cooperation of the owner, occupiers and operators of these places.

If you have any queries on the contents of this notice, please contact you nearest Customs and Border Protection Office (for contact details please go to www.customs.gov.au).