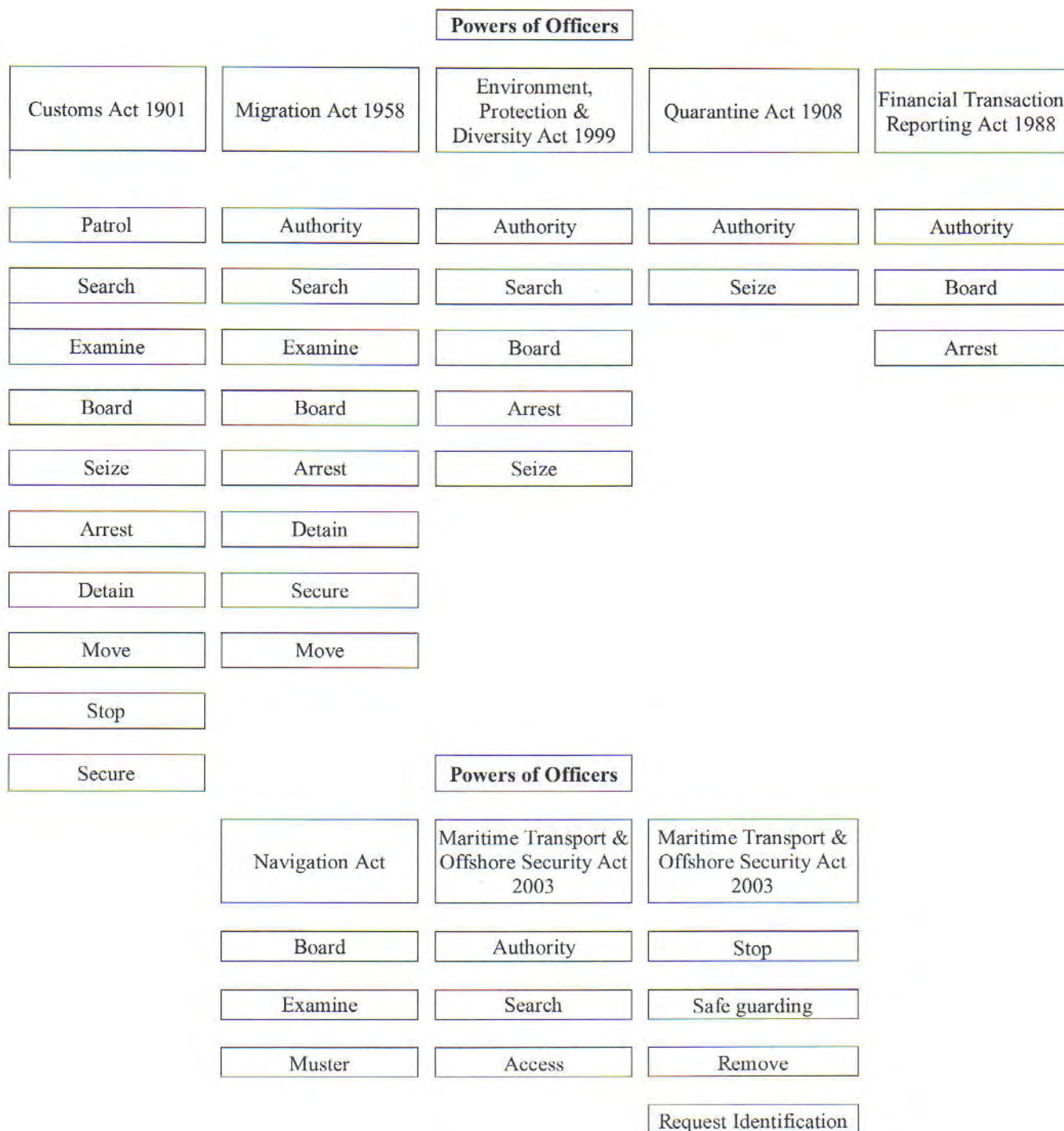




POWERS OF CUSTOMS OFFICERS SEAPORTS AND MARITIME ENVIRONMENT

Customs officers have a diverse set of powers that are contained in numerous pieces of legislation. These powers are generally directed to Customs border control and border integrity responsibilities. This document seeks to outline the powers of Customs officers as they apply in the maritime environment.

The diagram below provides a general overview of powers available to Customs officers. The relevant sections of the Acts are summarized and grouped by the type of power in the following pages.



CUSTOMS ACT 1901

s22(1)(a)(ii)

Search

s.185 - Power to board at sea

If a ship is at sea within Australia's contiguous zone or it is an Australian vessel, then it may be boarded and searched.

s.186 - General

The power to examine any goods subject to Customs Control is given to us by this section. It states that we may examine goods, seek assistance to examine and use technology to aid us.

s.186A

Gives officers the power to copy documents. It is conditional upon officers being "satisfied" that the doc contains information relating to an offence against the Customs or other prescribed Act.

s.187 - Power to board and search

Section 187 is the primary power used by Customs to search goods on vessels. It gives officers the power to board, search and secure goods on a vessel, Australian resource installation and Australian sea installation, and applies to circumstances not covered by s.185 (see below). Section 187(1)(a) enables an officer to board any of the above, and s.187(1)(f) enables officers to search these vessels and installations.

s.189 - Searching

Section 189 authorises officers to search every part of an vessel, Australian resource installation and Australian sea installation, open all packages, lockers, and other places, and to examine all goods.

s.185AA - Searches of people on vessels

If an vessel is detained under s185(3), s.185AA authorises officers to search without warrant the person on the vessel, and their clothing and property to see if they are carrying a weapon or tool to enable them to escape.

s.197(2) - Power to stop conveyances about to leave a Customs place

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s22(1)(a)(ii)

Examine

s.186 - Power to examine goods subject to Customs control

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Section 186 grants power to Customs officers to examine any goods subject to Customs control. Subsection 186(3) enables the use of technology in examining. Goods are in Customs control subject to s.30(ad) of the Customs Act, which states that they are under control from the time of importation until they are delivered into home consumption. This provision also allows officers to, for example, search vehicles which they reasonably suspect contain such goods.

s22(1)(a)(ii)

s.64AE - Obligation to answer questions and produce documents

The master of a vessel, if required to do so by an officer, may answer questions regarding the vessel, its cargo, crew, stores, passengers, voyage and if they are in control of documents of the subject mentioned, produce the documents on request.

s22(1)(a)(ii)

s22(1)(a)(ii)

Board

s.187 - Power to board and search

Section 187 is the primary power used by Customs to board a vessel.

s.188 – Boarding

If, after boarding the vessel, the officer is required to stay on board, the master of the vessel is required to provide sleeping accommodation in the cabin and suitable food for the officer.

s22(1)(a)(ii)

s22(1)(a)(ii)

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s22(1)(a)(ii)

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s22(1)(a)(ii)

Secure & Other Powers

s.31 - Goods on ships and aircraft subject to Customs control

All goods on board any ship or aircraft from a place outside Australia are under Customs

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control while the ship or aircraft is within the limits of any airport in Australia.

s.190 - Securing goods

When securing goods, Customs officer's powers extend to fastening down hatchways and other openings into the hold and locking up, sealing, marking or otherwise securing any goods. Section 191 states that a Customs seal placed on any part of the vessel or good inside must not be broken, while the item remains under Customs control.

s22(1)(a)(ii)

MIGRATION ACT 1958

Authority

s.5 - Customs officers are officers for purpose of act

Section 5 of the *Migration Act 1958* empowers Customs officers as “officers” for the purposes of the Act.

s22(1)(a)(ii)

Examine

s.245F(3)(b) - Power to board and search vessels

A request to board a vessel under, s245B enables Customs officers to examine any goods found on the vessel.

s.245F(6) & (7) - Power to board and search vessels

Subsections (6) & (7) allow assistance from other people, and the use of technology when examining goods under s.245F(3)(b)

Question

s.166 - Persons entering to give certain evidence of identity etc

Section 166 requires persons entering Australia to provide evidence of identity to a “clearance officer”. Customs Officers are authorised “clearance officers” under the Migration Act

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s.245F (3)(d) - Power to board and search vessels

If a ship is requested to be boarded land under s.245B, s.245F(3)(d) empowers Customs officers to ask questions, requires all persons found on the vessel to answer questions, and produce any documents in their possession relating to:

- the ship and its voyage;
- its cargo and stores;
- crew and passengers;
- the identity and presence of those persons on the vessel; and
- a contravention, an attempted contravention or an involvement in a contravention or attempted contravention, either in or outside Australia, of the Migration Act 1958.

S.257 – Question

An officer may question a remove or deportee to establish whether or not they are here unlawfully and the person is required to answer the question.

s22(1)(a)(ii)

Secure

s.245F(3)(c) - Power to board and search vessels

If a request to board under s.245B is made, s.245F(3)(c) provides Customs Officers with the power to secure any goods found on the ship or aircraft.

Copy

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s.245F(3)(e) - Power to board and search vessels

If a request to board under s.245B is made, s.245F(3)(e) provides Customs Officers with the power to copy, or take extracts from, any document that is found on the vessel, or is produced by a person on the vessel.

Move

s.245F(9) & (9A) - Power to board and search vessels

If an officer detains a ship or aircraft under s.245F, the officer may not only detain the person, but also move them to the migration zone, or arrange for them to be taken to a place outside of Australia. Section 245F(9A) states that the officer may place, restrain or remove the person on the vessel.

ENVIRONMENT, PROTECTION & DIVERSITY ACT 1999

Authority

s.397 and s.528 - Inspectors *ex officio*

Section 397(3) appoints Customs officers as inspectors for the purposes of an offence against, or a matter relating to Part 13A – International Movement of Wildlife specimens.

Customs officers are also authorised officers under s.528, which is relevant to those powers that may be exercised.

s.406 - Powers of authorised officers

An authorised officer who boards a vessel or platform under s.403, may:

- inspect and search the vessel;
- take photographs, video recordings, and make sketches of the vessel or of any substance or thing on the vessel;
- inspect, take extracts from, and make copies of, any document that is, or that the authorised officer suspects on reasonable grounds is, evidential material;
- inspect, and take samples of, any other evidential material;
- take measurements of, and conduct tests on, the vessel or any substance or thing on the vessel;
- exercise powers of seizure conferred on the authorised officer by this Act; and
- take onto the vessel any equipment or material reasonably necessary for exercising their powers.

This section also enables Customs officers to break open holds or compartments, containers or other receptacles on the vessel to enable them to exercise their powers.

Section 406 also requires persons on a vessel to answer questions; give information requested by the authorised officer; and produce documents or records kept on the vessel..

s22(1)(a)(ii)

This section applies to any goods that are to be, are being, or have been, taken on or off an vessel. Section 443 authorises Customs officers to open search any goods or baggage both inwards and outwards to check for goods listed under the *Environment and Heritage Act*.

The Customs officer may also ask a person who appears to be associated with the goods any question in respect of the goods.

Baggage includes any parcel or other goods that a passenger, the pilot or any other member of the crew of an vessel have in possession

s22(1)(a)(ii)

s.429 - Searches of aircraft, vehicles or vessels without warrant in emergency situations

If authorised officers reasonably suspect that an aircraft carries evidential material, and circumstances are serious and urgent, they may:

- stop and detain the aircraft, vehicle or vessel;
- search the aircraft, vehicle or vessel and any container in or on it, for the evidential material; and
- seize the evidential material if found.

If, while searching for the suspected evidential material, the officer finds any other evidential material relating to another offence against the Act, they may seize it if they reasonably suspect that it is necessary to do so to prevent concealment, loss or destruction; or the circumstances are serious and urgent enough to warrant it.

However, the search must be conducted in a publicly accessed place, and mustn't detain the vessel for longer than necessary. Force is allowed to be used to open a part of the vessel or a container but only if it does not damage the vessel, or if the person apparently in charge has been given a reasonable opportunity to open it, or if it isn't possible to give that person an opportunity.

s22(1)(a)(ii)

Question

s.443A - Authorised officer may ask questions about the nature or origin of specimens

If an authorised officer has reasonable grounds to suspect that a specimen in possession of a person, or has been, or is proposed to be imported or exported in contravention with Part 13A – International movement of wildlife specimens – the authorised officer may question the person about the nature or origin of the specimen.

The person is required to answer the question, except if the answer may tend to incriminate the person or expose the person to a penalty.

s22(1)(a)(ii)

s22(1)(a)(ii)

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s22(1)(a)(ii)

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FINANCIAL TRANSACTIONS REPORTS ACT 1988

Authority

s.33 - Questioning and search powers

For the purposes of s.33 (questioning and search) s.33A (arrest), Customs officers have the power to question, search and arrest.

Search

s.33 - Questioning and search powers

A person who either leaves or arrives in Australia is required to declare and produce any Australian or foreign currency if requested by an officer. The officer may examine articles, and search clothing to determine whether the person has any currency with them that would require a s15 report regarding currency transfer.

Customs officers can also search a prescribed place, and examine any goods found there for the purposes of finding out whether or not there is any currency which would require a s.15 currency transfer report.

They may also search vessel for the same purposes (see Board below)

Board

s.33 - Questioning and search powers

A Customs officer can board an vessel if it is necessary to exercise their powers of questioning, searching and seizing for the purposes of the Act. They may also search the vessel to ascertain the presence of currency requiring a currency transfer report pursuant to s.15.

s22(1)(a)(ii)

Seize

s.33 - Questioning and search powers

When a person presents to a Customs officer for arrival or departure, an officer may seize currency found during a search if they have reasonable grounds to believe it may be evidence of an offence

Customs officers may also seize currency found on board an aircraft during a search, if they have reasonable grounds to believe it evidence of an offence.