

# STATUTORY POWERS OF ENTRY

**Presented to the Minister of Justice  
April 1983**

**SEVENTEENTH REPORT OF THE  
PUBLIC AND ADMINISTRATIVE  
LAW REFORM COMMITTEE**

**Wellington  
New Zealand**

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of the Public and  
Administrative Law  
Reform Committee

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### 1. Introduction

- 1.01 The Minister of Justice has asked the Public and Administrative Law Reform Committee to study statutory discretions and the Committee decided to begin by considering statutory powers of entry to private property. Parliament has conferred very many powers of entry on a wide range of officials. The number of powers, the breadth of some of them, the apparent inconsistencies between them, and the absence of safeguards, have caused considerable public concern, notably that expressed some time ago by the Chief Ombudsman.
- 1.02 A number of concepts are in conflict. On the one side are rights of property and of privacy and, on the other, the interests of the state in the enforcement of the law and the prevention of offending. Again, the constitutional principle that entries and searches can take place only with the consent of the landowner or on the issue of a judicial warrant is to be pitted against the need, in some cases, for emergency action or for effective inspection of harmful activities. Then too the constitutional insistence on the precise and objective delimitation of governmental powers is to be weighed against the difficulty, in some cases, of predicting the exact range of cases in which an entry may be required. We have attempted to strike the appropriate balance in our statement of general principles and in the review of the particular provisions.
- 1.03 The Committee began by commissioning a report identifying and classifying these powers. This proved to be a very large research project. It was found that there were more than 150 separate powers of entry in the statute books. We listed together the various powers exercisable by the officials of each separate Government department, and invited departmental comments. Then we examined each separate power in the light of departmental comment about its importance and justification.
- 1.04 During this examination the Committee formulated a number of principles against which every power should be measured. We set these out in an interim report which briefly explained the rationale behind each principle. It also set out the preliminary thinking on other issues relevant to the study, some of which had not been finally resolved by then. This report was made public and, although no direct comment was received, there was favourable mention in professional journals.\* Each individual power identified was then considered in the light of the principles. Where we needed further guidance, or wanted to assess official reaction to a particular tentative recommendation, the appropriate Government department was asked for further comment. The replies were analysed, and recommendations

\* e.g. [1981] NZLJ 287

prepared in respect of each power. As a result, this report is in two distinct parts. The main body of the report deals with matters of general application and concern across the whole spectrum of powers of entry. The Appendix sets out, in alphabetical order of departments and of statutes administered by departments, all the powers that the Committee has examined and records the Committee's recommendations for amendments. Powers enacted in legislation up to the end of the 1982 Parliamentary session are included.

- 1.05 The Committee acknowledges the willing co-operation it received from departments and other organisations, which facilitated its work. When examining the powers, we found a substantial number that already accorded with all our principles. In other cases, departments frequently expressed a willingness to amend existing powers to conform. We are pleased to see that some departments have already begun to take into account the matters raised in the interim report.
- 1.06 The Committee has endeavoured to make its study of statutory powers of entry fully comprehensive, but it recognises that it will certainly have overlooked some powers.
- 1.07 This study is essentially of statutory powers, rather than of those contained in regulations. However, where the Committee has incidentally come across an example of the latter in the course of its research, recommendations have been included in the Appendix. The reason why powers of entry should be conferred by statute, and not by regulation, are discussed later in this report. (Paragraph 3.04)
- 1.08 It has become clear from the study of the statutory provisions that powers of entry are provided for five main purposes:
  - . emergency situations:
  - . detection of criminal offences:
  - . promotion of public welfare:
  - . routine inspections to ensure compliance with legislation:
  - . surveillance of licensed activities.
- 1.09 We have directed our study to powers of entry in administrative and public law. Those wholly in the criminal law field are beyond the scope of this report.
- 1.10 The most frequently used powers are inspection powers, particularly those in the area of health. Some powers have never been used.

- 1.11 The Committee has accepted that the pursuit of these purposes will justify incursions into private rights. Our objective is to ensure that statutory provisions should be framed so that such incursions are not arbitrary nor an undue interference with the rights of the individual. Early in our investigation we decided that we could not pursue the idea of recommending one model for statutory powers of entry. There are too many different categories. Any attempt to frame a model precedent would give too wide a power in some cases, too narrow a power in others.

We formulated a series of principles by which powers of entry should be measured and to which they should be expected to conform. The justification for departures from principle is discussed later. It is not practicable always to have consistency between powers in general, or even between those administered by a particular department. However, consistency between powers with similar purposes in similar situations is desirable.

- 1.12 The principles are:

1. A power enabling officials to enter private property must be essential to achieve a purpose of the Act.
2. A power to enter should be conferred expressly and not by implication.
3. The purpose that justifies an entry should be expressed in terms that are as precise as the subject-matter permits.
4. The grounds for an entry should be objective not subjective.
5. Reasonable notice of intended entry should be required except where the giving of notice is likely to defeat the purpose of the entry.
6. Where entry is required for the purpose of ascertaining whether an offence has been committed, the official should obtain a warrant from a judicial officer by written application on oath.
7. Where entry is to be into a dwellinghouse, it should be authorised by a warrant from a judicial officer by written application on oath.
8. The exercise of powers of entry should be confined to reasonable times.
9. A power to enter should not be accompanied by a power to use force in the entry, unless the absence of such an auxiliary power would frustrate the purpose of the entry.

10. An entrant should carry a warrant of authority to identify himself, the position he holds, and the source and nature of his authority, which he should produce upon initial entry, and if requested at any subsequent time.
  11. The acts that the official can perform, the questions he may ask once he has gained admission, and the use he may make of any information that he acquires following the entry, should be related to the purpose of the particular entry and should be specified as precisely as possible.
  12. The relationship between the privilege against self-incrimination and an official's power to ask questions should be clarified in respect of each separate power, preferably by expressly affirming the privilege.
  13. Where, consequent upon a power of entry, an individual is required to carry out work or pay for its completion, should he fail to complete it himself, he should be entitled to challenge the need for the work, and the cost of it, in the courts.
  14. When an enactment provides for compensation for damage occasioned by the entry, and the amount of that compensation is assessed by a Minister or official, then, in case of dispute, the amount should be determined by an independent tribunal or court.
- 1.13 Departures from some principles are more easily justified than from others. For example, where it is a condition of entry that the entrant believes that a particular state of affairs exists, it is fundamental that the condition should be stated objectively, not subjectively. An exception from that principle would scarcely ever be justified. By comparison, there may be cases where an exception could be made to the general requirement of a judicial warrant to authorise an entry to obtain evidence of an offence or to enter into a dwellinghouse. What may constitute justification for the relaxation of one principle may not be appropriate in relation to another.
- 1.14 The restrictions on powers of entry which we recommend will not necessarily result in additional cost or impairment of the performance of official duties. Unrestricted powers will not necessarily be effective in the long run. Narrower powers may promote co-operation and efficient administration rather than the resistance and resentment that can be caused by what is seen as overbearing officialdom exercising powers arbitrarily.

2. Manner of Exercising Power of Entry

- 2.01 Many issues have been raised during the Committee's investigation that in our view could be better dealt with as a matter of civility and courtesy by officials in exercising powers of entry, and in codes of practice. Officials should go out of their way to ensure that occupiers of premises where officials are entering are not embarrassed by the entry any more than is absolutely necessary. For example the official should attempt to explain his visit in the occupier's office rather than in the middle of a restaurant or shop in front of customers. There is no need for officials to be officious, impatient, or inconsiderate. Much of the public opposition to, and odium for, powers of entry can be overcome if officials pay careful attention to the manner in which they exercise their powers.
- 2.02 Several departments already have codes of practice. The Committee believes that such codes should be established for all officials exercising powers of entry. These might cover general rules about how to exercise powers, how to handle assistants or equipment needed to fulfil the purpose of entry, and the circumstances in which assistants should be introduced to the occupier.

There should also be provision for training officials who are to exercise powers of entry on to private property. The way in which entry is to be gained should not simply be left to the commonsense of the official without any previous instruction or discussion.

3. The Principles

1. The Essential Power Principle

A power enabling officials to enter private property must be essential to achieve a purpose of the Act.

- 3.01 We see this principle as raising the most basic question of all. It must always be asked whether the power is really necessary. Just because a power is rarely used, however, does not mean that it is unnecessary. In practice statutory powers of entry are invoked in two ways. First, they are invoked in order to enable officials (in which category we include inspectors) to enter and perform their official duties on the land or premises of a person who, in the absence of a statutory power, would refuse to permit such entry. Secondly, the existence of the power is often pointed to by an official in order to induce an occupier to permit an immediate entry, the occupier knowing that, if he refuses, the official will go away and obtain a warrant and then be entitled to enter. In the latter case it would be misleading to speak of entry "pursuant to the power", or of the official "using" the power. It does not follow from the fact that a statutory power is seldom invoked in the first of these two ways that it should be regarded as a candidate for repeal, for it may be that the possibility of invoking the power in the second way is of more significance in practice.

In any event a seldom used power may be judged to be essential if a statutory purpose is to be achieved; it depends on the particular purpose, the importance of the power in terms of its social purposes, and the likelihood of resistance by individual occupiers. However a power to enter cannot be regarded as justified if the administering department is not able to demonstrate that that power is presently needed. Putting the point in another way, the power of entry is unjustified if it may perhaps be needed in future hypothetical situations, but has not been found to be needed in recent practical experience.

- 3.02 We recognise that an official often enters premises with the implied consent of the owner or occupier, particularly public areas of business premises. For example, a health inspector may purchase food as a member of the public with the intention of submitting it to analysis. In such a case the official is not exercising a statutory power of entry and accordingly is outside the scope of this study.

## 2. The Express Power Principle

A power to enter should be conferred expressly and not by implication.

- 3.03 It is a matter of some concern that a significant proportion of entry rights are not explicitly stated, but are left to be inferred from the legislation. In some instances a power of search has been conferred, but nothing is said expressly about a power to enter private property to conduct the search. In our opinion the conferring of a power to enter private property is too great an infringement of private rights to be done by implication. Parliament should give specific consideration to the need for it, and its intention to authorise such an interference deserves to be expressed by clear words.

- 3.04 Further, power to enter should almost invariably be conferred by the empowering Act, and not by regulations made under it. Its existence and terms will then be capable of being debated while the Act is passing through the various Parliamentary stages. Special considerations may justify the location of the power to enter in the regulations themselves. One example of this is where conferment of power in the statute itself would necessarily mean that it could only be expressed in the statute in undesirably wide terms (because of the variety of situations to which powers of varying scope would be appropriate). Another is where the regulations form a type of code of practice and it would be misleading not to find the power of entry there. In such a case however, the power in the regulations should simply repeat a power already found in the parent Act.
- 3.05 Moreover, powers of entry should never be conferred by mere bylaws when this course is avoidable. Although bylaws are subject to advertising requirements and, unlike regulations, may be attacked in the courts on the ground of unreasonableness, they are not as accessible to the public as are statutory regulations. When an Act empowers the making of bylaws, it should specifically exclude the making of bylaws conferring a right of entry.

### 3. The Precise Purposes Principle

The purpose that justifies an entry should be expressed in terms that are as precise as the subject-matter permits.

- 3.06 Purposes for which an official may effect an entry should be defined and individuals should be able to discover them. An overwide statement of purpose will tend to give rise to doubt. A power of entry exercisable "for the purposes of this Act" is objectionable because it creates some uncertainty, and leaves open a doubt whether the Act in question has some general purpose which transcends the purpose underlying the particular section or sections.

### 4. The Objective Belief Principle

The grounds for an entry should be objective not subjective.

- 3.07 This principle is closely connected to the purpose of entry. It deals with the state of mind of the person deciding whether or not to enter. Objectively framed tests are preferable, because once they are framed they operate as a check upon official eccentricity or arbitrariness.

### 5. The Notice Principle

Reasonable notice of intended entry should be required except where the giving of notice is likely to defeat the purpose of the entry.

- 3.08 The notice should contain a reference to the particular statutory source of the power, to the purpose of the entry, and to the time when the entry is to occur.
- 3.09 Such a notice will enable a person upon whom it is served to seek legal advice and to check the limits of the power and ensure that the purpose and time proposed for the entry fall within the bounds of the statutory specifications. Sometimes it may be sufficient if notice is given over the telephone or if the recipient is otherwise orally given the information that the principle regards as essential. Oral advice has the disadvantage that it can be misunderstood. Particularly when given over the telephone the message may be received by someone other than the appropriate party and will often suffer from misinterpretation or distortion when it is passed on.
- 3.10 The Committee considered whether the notice should contain the name of the particular official who will be exercising the power. However we concluded that the practical implications of such a move would preclude a general requirement to that effect. It could be difficult to predict a week beforehand who would be performing a particular task when different work priorities and possible sickness are taken into account. As a matter of courtesy, such information should be supplied whenever practicable.
- 3.11 Deciding what length of notice of an intended entry is reasonable requires consideration of both the needs of the entrant and the circumstances of the occupier. It may depend on the ability of the official to predict when the need to enter will arise, and on the urgency for entering when the need becomes apparent. It will also vary according to the degree of interference with the occupier's activities, and the intrusion into his privacy, which may result. It is not possible to stipulate a period of notice which can have general application.
- 3.12 The Committee recognises that in rare cases it may not be practicable to give notice because such notice would frustrate the purpose of the power. Clearly there is little point in giving 48 hours notice before an official calls to inspect hygiene in a restaurant. In such circumstances spot checks are necessary. Provision for this type of situation should be an exception to a general rule in the particular statute requiring notice.

#### 6. The Evidence/Warrant Principle

Where entry is required for the purpose of ascertaining whether an offence has been committed, the official should obtain a warrant from a judicial officer by written application on oath.

- 3.13 Any official who seeks evidence of an offence and who has not obtained the occupier's permission to enter should generally be required to obtain a judicial warrant. A power to enter for such a purpose without warrant should be conferred only when an overriding public interest demands such power, and it should be accompanied by stringent safeguards such as authorisation by a senior officer in the relevant department, and reporting to a senior officer. Further it would be desirable that the Department report annually to Parliament on the number of such entries and their purpose. The appropriate level of seniority is a policy question for Parliament to decide in an individual case, rather than a matter for this Committee.
- 3.14 Where a judicial warrant is obtained for the purpose of detecting a criminal offence, or for entry into a dwellinghouse, the Committee considers that there should be a finite period during which the warrant is valid, at the end of which time it expires. At present, provisions in statutes show considerable variation. They range from setting a fixed period of validity, to stating that a warrant shall continue in force until the purpose for which it is issued has been fulfilled, to making no mention of the termination of the warrant at all. A general authorisation for entry is acceptable only in exceptional circumstances and subject to stringent safeguards such as the requirement of reports to Parliament or a senior officer.
- 3.15 If justification exists for the issue of a warrant then there is no excuse for long delays in executing it, even allowing for other duties of higher priority. As a general guide the Committee recommends a limit of one month, after which time the warrant would expire. This should allow sufficient time to execute the warrant among work of higher priority. The Committee consider that warrants should also expire as soon as the purpose for which they are issued has been satisfied. The statute should expressly provide for this as well as stipulating the finite period.
- 3.16 The need to act at once will sometimes override the need to obtain a warrant, particularly where lives are in danger. In such situations as many safeguards as possible should surround the exercise of the power. This is the reason for the requirement that a senior officer must authorise the entry and that a report should be lodged after the event. Such power should only be conferred for emergency or other exceptional cases.
- 3.17 The term "judicial officer" is purposely used instead of "District Court Judge" so as to include Court Registrars and Justices of the Peace. In practice Registrars and their deputies as officers of the Court issue most warrants. Such practice is acceptable only if the applications for warrants are made in writing and on oath.

## 7. Dwellinghouse Principle

Where entry is to be into a dwellinghouse, it should be authorised by a warrant from a judicial officer by written application on oath.

- 3.18 It is appropriate to require a warrant before entry into a dwellinghouse in cases where a warrant would not be necessary for other premises. Parliament has recognised the special position of dwellinghouses in this way in many statutes. It is not that we consider that greater justification, as such, need be shown to enter a dwellinghouse than to enter any other premises. However, there is a need for particularly careful scrutiny to ensure that sufficient justification exists for intruding upon domestic privacy, and that is why we recommend that a judicial warrant should have to be obtained. It is an additional procedural barrier, but so long as the essential purpose of the power can be shown to be fulfilled in a particular situation, it will cause no more than a little delay - which the Committee considers is justified to safeguard the privacy of homes.
- 3.19 We need to define what we mean by a dwellinghouse in this context. Does a dwellinghouse include the garden, the garden shed, the patio, a motel unit? Does the right of privacy end at the front door or at the front gate? In practice there is no right to total freedom from intrusion at the front gate and normally anyone has an implied licence to enter grounds and go straight to the front door so long as he leaves if asked to do so. Should he fail to do so within a reasonable time he becomes a trespasser - Robson v. Hallett [1967] 2 All E.R. 407. Statutory definitions vary with the purpose of the particular legislation and are of little assistance. It comes down to balancing the need to protect privacy with the public interest of detecting offences and checking up on particular activities.
- 3.20 In our opinion there should be consistency of definition among Acts which specifically confer power to enter dwellinghouses and in which the term dwellinghouse has no special meaning. That term should be given one consistent meaning so that any judicial elucidation of the term in one Act can be confidently applied to another. Section 2 of the Housing Act 1955 defines "dwelling" as:

any building or part of a building that is suitable for residential accommodation of any kind; and includes every garage, shed, and other building used in connection therewith; but does not include the land appurtenant to a dwelling.

- 3.21 By way of contrast the definition in section 2 of the Tenancy Act 1955 of a "dwellinghouse" is:

any building or part of a building let as a separate dwelling; and includes any furniture or other chattels that may be let therewith; and also includes any land, outbuildings, or parts of buildings included in the tenancy; but does not include -

- (a) Any licensed premises; or  
(b) Any premises that include more than three acres of land where the tenant's income or a substantial part thereof is derived from the use of that land for agricultural purposes.

- 3.22 Although we gave careful consideration to the question how far the protection afforded to the occupiers of a dwellinghouse should extend into the grounds and outbuildings, we were not able to resolve it on the basis of a principle which would be applicable to all circumstances. We concluded that a judicial warrant should be required to authorise entry into any part of any building or structure which is occupied as a residence, or into any part of any building, structure, or outdoor living area which is accessory to, and used wholly or principally for, the purposes of the residence.

#### 8. The Reasonable Time Principle

The exercise of powers of entry should be confined to reasonable times.

- 3.23 Occasionally there may be a reason for conferring a power to enter "at any time" but such a power would need to be convincingly justified. A restriction to entry at reasonable times should be seen as a minimum standard. In some cases it may be preferable to use the phrase "at times which are reasonable in the circumstances". In many cases more restrictive times for entry are specified in the empowering Act, and such a practice is to be encouraged wherever possible.

- 3.24 One department evidently considered that the phrase "reasonable time" might mean particular hours of the day. The Committee emphasises that what is a reasonable time will depend on the particular circumstances. It might be reasonable to enter a caravan in a National Park at 5 a.m. if the occupants were suspected of poaching and appeared to be about to leave the area. Such an entry might be unreasonable if it were merely for the purpose of inspecting a fishing licence.

9. The Forcible Entry Principle

A power to enter should not be accompanied by a power to use force in the entry, unless the absence of such an auxiliary power would frustrate the purpose of the entry.

- 3.25 A power of entry which is silent about the use of force does not authorise force. It merely means that the entrant is not liable for trespass to land. The Committee has not considered the question who should bear the cost of repairs caused by forcible entry. In some cases specific provision is made in the statute that the entrant should make good any damage. In others there is a compensation provision. In some other cases it is a matter which is or should be dealt with in a code of practice. It is a question which should be addressed in each enactment authorising forcible entry.

10. The Identification Principle

An entrant should carry a warrant of authority to identify himself, the position he holds, and the source and nature of his authority, which he should produce upon initial entry, and if requested at any subsequent time.

- 3.26 For example, an inspector, on entering upon a farm may show his identification to some person at the farmhouse and tell that person of the entry. That person may not be the farmer. If the farmer later stops the inspector in some distant field, the inspector should at once volunteer his identification. This is really a matter of courtesy.
- 3.27 The warrant of authority would amount to more than the identification presently required in many statutes. We envisage a warrant which would also set out the source of the official's authority, and state the powers which it confers on the holder.
- 3.28 Some objections were made that production would be onerous and unnecessary, especially where the official is already well-known to the occupier. But we consider that these factors are outweighed by other considerations. Production of the warrant of authority is no hardship on the official; it may make his task easier, and it may reassure those who would otherwise be too timid to request it. Certainly no entry should ever be effected without the official carrying his warrant of authority. One department was concerned about the likely cost of issuing such warrants to all its officers in the field. Only the principal entrant would need one, not his assistants, and the Committee considers that such a cost must be borne as an incident of officials needing to enter private property.

- 3.29 However officers who wear sufficiently distinctive uniforms need not always be required to carry warrants of authority. In such cases the uniform itself may serve as sufficient identification if it carries an identification number, like the uniforms of police constables.
- 3.30 Some departments have expressed opposition to legislative requirements for the showing of identification lest they frustrate entry where nobody can be found to give notice to, or to be shown identification. Obviously a requirement to give notice and to produce identification includes an obligation to make a reasonable effort to locate the occupier so that the requirement can be fulfilled. The Committee suggests that wherever the occupier cannot be found and entry has been made without giving notice, a note should be left behind saying that the official has been there and has entered the property. An exception to this would be where another entry will be necessary and the official does not wish to alert the occupier to the fact that he has been there if this would frustrate the purpose of the power. Generally the leaving of notice of entry would be good public relations as it may be apparent to the occupier when he returns that somebody has been there. It is far better that he is told officially and directly rather than unofficially and at second or third hand. Such a practice may have an added benefit as a public awareness that inspectors are in an area will tend to ensure that those persons in that area who are liable to inspection do not relax their standards.

#### 11. Precise Power Principle

The acts that the official can perform, the questions he may ask once he has gained admission, and the use he may make of any information that he acquires following the entry, should be related to the purpose of the particular entry and should be specified as precisely as possible.

- 3.31 Many of the present provisions do no more than confer a power to enter, giving little or no idea what an official may do once he has legitimately crossed the threshold. The extent of his powers should be clearly stated.
- 3.32 When the purpose of the entry is to obtain specific information, the relevant legislation should specify the purpose for which the information is to be obtained and used, and how widely it should be made available.
- 3.33 Where information obtained by the official is incidental to the purpose of entry and there is no legal injunction against its dissemination, it should nevertheless be a matter of good practice that it is kept confidential.

12. The Questions Principle

The relationship between the privilege against self-incrimination and an official's power to ask questions should be clarified in respect of each separate power, preferably by expressly affirming the privilege.

- 3.34 The privilege is expressly affirmed in comparatively few existing statutes. The Committee's view is that this should become the general rule and that where the privilege is negated, this should be clearly stated. A department should bear the onus of establishing that negation of the principle is clearly justified in the particular enactment.

13. The Challenge Requirement Principle

Where, consequent upon a power of entry, an individual is required to carry out work or pay for its completion, should he fail to complete it himself, he should be entitled to challenge the need for the work, and the cost of it, in the courts.

- 3.35 Questions as to the cost of the work may at present arise by way of defence to proceedings for debt. This principle goes further and allows the need for the work itself to be questioned. That is not possible under all enactments of this type at present.

14. The Compensation Principle

When an enactment provides for compensation for damage occasioned by the entry, and the amount of that compensation is assessed by a Minister or official, then, in case of dispute, the amount should be determined by an independent tribunal or court.

3.36 Usually either the Land Valuation Tribunal or the District Court will be appropriate. Assessment by a Minister or official of the department itself without a right of appeal is unacceptable. However, many enactments already recognise the principle which we consider should be universal unless the relevant department can discharge an onus of showing why an exception should be made. An example is contained in section 31 of the New Zealand Railways Corporation Act 1981, under which the Corporation is empowered to require the occupier of land abutting upon a railway to do any of several acts, including trimming any tree or hedge, or lowering any fence or wall, if in the Corporation's opinion the tree, hedge, fence, or wall is likely by reason of its obstructing the view, to cause danger to the traffic on that or any other railway. The occupier is entitled to apply to a District Court for an order setting aside the notice, and it is implicit that he may challenge the need for that work to be done. Obviously such work may be expensive, and the occupier is entitled to argue that the cost of the work is excessive. The same section is also to be commended for providing that all claims for compensation in respect of the exercise of any powers conferred by the section shall, unless settled by agreement, be determined in the manner provided by the Public Works Act 1981.

#### 4. Other Matters

In addition to the principles we have considered a number of other general matters.

##### Licensing Situations

4.01 The Committee considers that it is proper to distinguish between situations:

- (a) Where the occupier of premises is licensed or otherwise regulated or is contractually related to the person entering; and
- (b) Where entry is into private property and the occupier has no special pre-existing relationship with the person entering.

The Committee considers that deviation from the general principles enunciated in its report is less objectionable in a licensing situation than in others. The grant of a licence carries with it a greater obligation to accept surveillance and a corresponding dilution of the privacy arguments which exist in situations where there is no relationship between the parties. It will be apparent from the Appendix to the report that in licensing situations, the Committee has been more ready to accept departures from the principles as justifiable.

4.02. Within the licensing situation, there are two distinct categories carrying different degrees of obligation. Relaxation of a particular principle may be more easily justified in one category than in the other; viz:

(i) Where the licensee is put into a privileged position through the grant of a licence and given legal authority (e.g. a tavern keeper), he should be subject to particularly careful scrutiny to ensure that he complies with the responsibilities of that situation;

(ii) Where the licensee is engaged in a potentially dangerous activity (e.g. the manufacture of explosives), it is in the public interest that the activity be stringently regulated.

4.03 Often in licensing situations, entry is contractual rather than on a statutory basis, and as such outside the scope of this report. Nevertheless, in such a case, the licensee often has no choice: either he agrees to entry on the licensor's terms or he is not granted a licence.

Inspector who has two powers of entry under two different statutes

4.04 The Committee is aware that difficulties can arise where an inspector enters premises pursuant to a power under one statute and sees some deficiency that he would normally have power to report on pursuant to another power under another statute. There is no problem if both powers are conferred by the same Act. It is commonly held that an official should generally confine himself to the particular purpose for which he sought entry. The admissibility of evidence of other matters observed during the course of a visit for another purpose is not within the scope of this report. In some cases where an individual thinks that an inspector is exercising an inappropriate power he may complain to the particular department involved, and, failing satisfaction, to the Ombudsman.

Search Warrants

4.05 The Committee has not covered this topic in its study. We believe it would be better covered by a separate study. We have recommended that an ad hoc Committee be appointed to perform this task.

5. Specific Recommendations

- 5.01 In the Appendix the Committee has made a note of every power that it has examined. In many cases no recommendations are made about the power as the Committee considers that it adequately meets its general principles. For the others, it has recorded how far the particular power fails to measure up to the Committee's principles, and what alterations would be needed for it to comply fully. In many cases amendments to the relevant Act are recommended. Where departure from principle has been found to be justified by the Committee, the rationale behind such a decision has been outlined. In addition, in some instances the reasons why a department's justification or the form of a particular power has been rejected by the Committee are explained. The Committee took the view throughout that the onus to justify a departure from principle was on the relevant administering department. If in the Committee's opinion that onus has not been discharged in borderline cases, the principle has been adhered to.
- 5.02 The Committee hopes that its report will serve a twofold purpose. First, it should serve as a guide to departments in framing powers of entry in future legislation. Indeed the Committee is gratified to see that some departments have already begun to take into account the matters raised in the interim report. Secondly, the recommendations in the report should serve as the basis for amendments to existing legislation. It may be that an appropriate method of implementation would be for the Committee's recommendation on a particular power to be incorporated in the relevant Act when other aspects of that Act are being amended, so that no separate Bill is required. Alternatively, many of the Acts might be amended by one omnibus Bill such as a Law Reform Bill or a Statutes Amendment Bill.

5.03 The members of the Committee at the time of the final report are listed below. We acknowledge that Professor J.F. Northey, as Chairman of the Committee until April 1982, made a significant contribution to our discussions.

For the Committee



Chairman

Members of the Committee

Judge D.F.G. Sheppard (Chairman)  
Mr S.G. Erber  
Mr W. Iles  
Professor K.J. Keith  
Mr G.R. Laking C.M.G.  
Dr D.L. Mathieson  
Mr E.A. Missen O.B.E.  
Mr J.B. Robertson  
Mrs C.J. Cosgriff (Secretary)

April 1983

**APPENDIX**

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MINISTRY OF AGRICULTURE AND FISHERIES

Agricultural Pests Destruction Act 1967

Sections 56,101,103(1),105(2),106, and 107

The Committee recommends that:

- (a) specific statements of purpose be included;
- (b) the right of objection be widened; and
- (c) the identification principle be complied with.

The Department has advised that these sections will be revised during the review of this Act which is currently under way, and that the recommendations made by the Committee will be implemented.

Animals Act 1967

Section 6

This section is intended to prevent the introduction and spread of disease among animals and to enable the Ministry to take rapid action in emergency situations. Accordingly, the Committee considers it is not necessary to require that an application for a warrant should be written and on oath. However, the Committee recommends that:

- (a) the purposes for which the power may be exercised should be precisely stated; and
- (b) identification should be produced on entry whether or not requested.

Animals Protection Act 1960

Section 10

The Committee recommends that:

- (a) applications for warrants should be made in writing; and
- (b) identification should be produced in every situation where the power is exercised, whether or not requested.

Animal Remedies Act 1967

Section 42

The Committee considers that identification should be produced before every exercise of this power of entry and does not accept the Ministry's view that this is too onerous a requirement.

The Ministry contended that a general requirement to give notice of each entry would sometimes frustrate the purpose of entry. The Committee does not consider that this argument is a justification for a full departure from principle. Instead the section should contain a general requirement for notice with an exception where it would frustrate the purpose of the Act.

The Ministry has concurred with the Committee's view that all applications for judicial warrants should be made in writing.

The Committee recommends that:

- (a) identification should be produced before each entry; and
- (b) notice should be given except where it would frustrate the purpose of the entry; and
- (c) applications for judicial warrants should be in writing.

#### Apiaries Act 1969

##### Section 7(4)

The Department noted that destruction of hives would be carried out in the interests of disease control. The Part of the Act in which section 7(4) appears does not, however, deal with disease control but with the keeping of bees. Consequently, the Committee recommends in relation to section 7(4), that in exercising this power an inspector should:

- (a) give reasonable notice; and
- (b) be restricted to entering at reasonable times; and
- (c) offer identification.

##### Section 8 and section 37

These powers appear to comply with all principles.

#### Apple and Pear Marketing Act 1971

##### Section 41

This is a very wide power and the Committee questioned whether civil liberties were not more important than the preservation of monopolies. The Department's response indicated that this power was the result of a policy decision which was fully debated before the Lands and Agriculture Select Committee in 1971. Accordingly the following recommendations do not relate to the width of the power.

The Committee recommends:

- (a) that section 41(3) be amended to comply with:
  - (i) the evidence/warrant principle; and
  - (ii) the reasonable times principle; and
  - (iii) the identification principle; and
- (b) that section 41(4) be amended to comply with the questions principle, preferably by affirming the privilege against self-incrimination.

Dairy Industry Act 1952

Sections 5 and 30(c)

The Committee recommends that:

- (a) entry should be restricted to reasonable times; and
- (b) identification should be produced whenever the power is exercised.

Dog Control and Hydatids Act 1982

Section 70

The Committee recommends compliance with the identification principle.

Fertilisers Act 1982

Section 14

The Ministry has agreed to standardise the objective grounds on which the power may be exercised and this has been implemented.

The Committee recommends that the identification principle be complied with.

Fisheries Act 1908

Sections 9, 55 and 80

This Act is being revised. The Committee has discussed with the Ministry both the form of section 9 and the fact that the section does not conform with the questions principle. It has also pointed out the need to establish a consistent formula of "reasonable belief" before entry can be effected, for all 3 sections.

The Ministry replied that the Committee's comments would be incorporated in the revision. An oversight has occurred as the changes required by the Committee's comments have not been incorporated in the Fisheries Bill which was introduced in 1982 and is at present before Parliament.

Margarine Act 1908

Section 6(2)

The Department accepted the Committee's recommendation that it would be preferable for the power of entry to be conferred by court order rather than as a separate power. The Department has agreed that the necessary amendment should be incorporated in the Act when it is next amended.

Marine Farming Act 1971

Section 41

The Department accepted the Committee's recommendation that notice of entry should be given and entry should be restricted to reasonable times. It has agreed to incorporate this amendment when the Act is next amended.

The Committee also recommends that the identification principle should be adopted.

Marine Mammals Protection Act 1978

Section 13

This power appears to comply with all principles.

Section 14

The Ministry accepted that the application for a warrant should be in writing and on oath. The Committee recommends that the necessary amendments be incorporated in the Act when it is revised.

Marine Reserves Act 1971

Section 18(1)(f)

The Ministry has agreed that there is no reason why two different tests of the need for entry should be used in this section, i.e. "reasonable belief" and "reason to suspect". The Committee recommends that:

- (a) these two tests be made consistent when the Act is next amended; and
- (b) the identification principle be adopted.

Meat Act 1981

Section 6

The Committee recommends, and the Department agrees, that the section should be amended to conform with the identification principle.

Milk Act 1967

Sections 56 and 58

The Committee recommends that the section be amended to conform with the identification principle.

Noxious Plants Act 1978

Section 46

This section does not comply with the questions principle. The Committee recommends that the power conferred by the section be amended:

(a) so that the privilege against self-incrimination is affirmed; and

(b) so that the reasonable times principle is conformed with.

Section 100

The Committee questioned why the immunity for damage done to the property during the reasonable exercise of this power extended to the Board as well as the Ministry official. The Ministry accepts, that immunity should be restricted to the official. The Committee recommends:

(a) that the immunity be so restricted; and

(b) full compliance with the identification principle.

Sections 38 and 76

These powers appear to comply with all principles.

Pesticides Act 1979

Section 55(2)

This power appears to comply with all principles.

Plants Act 1970

Section 19

The Ministry has accepted that the application for the judicial warrant should be made in writing and on oath. The Committee recommends that the necessary amendment should be incorporated in the Act when it is revised. The Committee also recommends that the identification principle be fully complied with.

Potato Industry Act 1977

Section 34

The Committee recommends that identification should always be produced when exercising this power of entry. The Committee does not support the Ministry's contention that a departure from principle is justified because entry is only onto land and not into buildings.

Poultry Act 1968

Section 9(5)

The Ministry has accepted that written notice should be given to both the owner of the premises and the occupier and that an inspector should be required to have "reasonable cause to believe that any poultry are infected". The Committee recommends that these amendments be incorporated when the Act is reviewed.

Sections 5 and 9(6)

The Committee recommends that these provisions be amended to conform fully with the identification principle.

Stock Foods Act 1946

Section 11

The Committee recommends compliance with the identification principle.

CUSTOMS DEPARTMENT

Customs Act 1966

Sections 217 and 218

Sales Tax Act 1974

## Sections 18 and 63(6)

The Committee considers that the exercise of a power of entry under any of these provisions should be restricted to reasonable times except where the exigencies of the situation require otherwise. Customs Officers carrying out powers of entry should be required not only to carry their identification (as Departmental instructions currently require) but also to produce them on entry and at any subsequent time when required. The Committee recommends amendments in these respects.

It was suggested that notice of an intended entry should be given. However, the Department argued persuasively that, given the enforcement context, this would defeat the purposes of the power. The Committee considers this to be a justified exception.

The Committee enquired whether it would not be preferable for warrants to be issued only by judicial officers. The Department indicated that in many cases the need for immediacy of action, particularly when dealing with drugs, would preclude them from obtaining a warrant from a judicial officer. It was, however, prepared to distinguish between emergency and non-emergency situations and suggested that in all but the most exceptional cases the use of a customs warrant should be sanctioned by a judicial officer. Where the use of a customs warrant without judicial sanction is unavoidable, a Collector of Customs should be able to approve such use provided that there are reasonable grounds for believing that the use of the power is justified and the case is one of great emergency where immediate action is necessary. In addition, a Collector giving approval should, within 3 days after the day on which the approval is given, furnish to the Comptroller of Customs a written report on the exercise of the power and the circumstances in which it came to be exercised. The Committee considers a partial exception from the general principle justified in this situation, and recommends amendment accordingly.

In addition, the section does not comply with the questions principle. The Committee, however considers that s.299 is sufficient in the circumstances.

Beer Duty Act 1977

## Section 36

The Committee recommends that:

- (a) entry should be restricted to reasonable times; and
- (b) notice should be given except where this would frustrate the purpose of the power; and

- (c) identification should be produced whenever the power is exercised.

Distillation Act 1971

Section 73

The Committee recommends that:

- (a) entry should be restricted to reasonable times; and
- (b) notice should be given except where this would frustrate the purpose of the power; and
- (c) identification should be produced whenever the power is exercised; and
- (d) the privilege against self-incrimination should be affirmed.

MINISTRY OF DEFENCE

Armed Forces Discipline Act 1971

Sections 95(1)(b) and 96

The Ministry indicated that these powers are limited to entering premises within a defence area. The Committee considers an exception to the general principles is therefore justified and makes no recommendation for amendments.

Defence Act 1971

Section 75(2)(b)

Although this provision does not comply with the general principles the Committee considers it to be a justified exception as long as it applies only within recognised defence land. It should not include the power to enter land outside a defence area.

Defence Regulations 1972

Regulation 32

This power appears to conform with all principles.

Military Manoeuvres Act 1915

Section 2

This power has not been exercised since World War I and the Committee recommends that the provision be repealed.

EARTHQUAKE AND WAR DAMAGE COMMISSION

Earthquake and War Damage Act 1944

Section 21

The Committee recommends that:

- (a) identification should be produced whenever the power is exercised; and
- (b) use of the power should be restricted to reasonable times; and
- (c) notice of entry should be given; and
- (d) if entry is to search for evidence of a criminal offence a judicial warrant should be obtained by written application on oath.

The Commission agreed with the above recommendations but did not consider that it was appropriate for the statute to spell out whether or not the privilege against self-incrimination was abrogated. The Committee recommends further that the privilege should be expressly affirmed.

DEPARTMENT OF EDUCATION

Education Act 1964

Section 185

The Committee recommends that:

- (a) identification should be produced on entry and at any subsequent time if required; and
- (b) entry should be restricted to reasonable times.

The Department indicated that formal notice of all visits by school inspectors would not be feasible. The Committee accepts that this is a justified exception to the notice principle.

The Committee asked the Department if the purposes for which the power may be exercised could be more precisely stated. The Department opposed such a suggestion explaining that visits were for a very wide range of reasons. Any attempt to be more precise would result in a very long section. The Department was particularly concerned that more restrictive drafting might mean their access to some schools would be jeopardised, and it felt that this would not be in the public interest. The Committee considers that this reasoning justifies an exception to the precise purposes principle.

Sections 185A and 186A

The Committee recommends that:

- (a) entry should be restricted to reasonable times; and
- (b) identification should be carried and produced on entry and at any subsequent time if required; and
- (c) in section 186A(5) the implied power of entry should be express.

Section 186

The Committee recommends that:

- (a) the power of entry should be express and not implied; and
- (b) entry should be restricted to reasonable times; and
- (c) identification should be carried and produced on entry and at any subsequent time if required.

MINISTRY OF ENERGY

Atomic Energy Act 1945

Section 15

The Committee recommends that the power be amended to conform with the identification principle.

Coal Mines Act 1979

Section 11

The Committee recommends that the power be amended to conform with the identification principle.

Section 39

The Committee recommends that the power be amended to comply with:

- (a) the identification principle; and
- (b) the notice principle.

Section 55

This power appears to comply with all principles.

Section 95

The Committee recommends amendments:

- (a) to comply with the identification principle; and
- (b) to comply with the notice principle; and
- (c) to provide for three working days notice as in the analogous section 112 of the Mining Act 1971.

Sections 173,174, and 175

These powers appear to comply with all principles.

Section 200

The Committee recommends compliance with:

- (a) the identification principle; and
- (b) the reasonable times principle.

Section 206

This power appears to comply with all principles.

Section 208

The Committee recommends that consideration be given to providing a right of objection.

Electric Power Boards Act 1925

Section 80

The Committee recommends that identification should be produced whenever this power is exercised.

Section 84

The Committee recommends that:

- (a) identification should be produced whenever this power is exercised; and
- (b) notice of entry should be given; and
- (c) entry should be restricted to reasonable times.

Section 87

The Committee recommends that:

- (a) identification should be produced whenever this power is exercised; and

(b) entry should be restricted to reasonable times.

Electrical Registration Act 1979

Section 39

The Committee recommends that this section be amended to provide for notice of entry.

Electricity Act 1968

Section 15

The Committee recommends that:

- (a) identification should be produced whenever this power is exercised;
- (b) notice of entry should be given; and
- (c) entry should be restricted to reasonable times.

Section 19

The Committee recommends that:

- (a) identification should be produced whenever this power is exercised; and
- (b) entry should be restricted to reasonable times.

The Ministry of Energy did not agree to the Committee's suggestion that this power of entry should be restricted so that it could be exercised only at reasonable times because the owner would already have had seven days' notice in which to do the work himself. The Committee considered that the giving of notice would not justify entry on private property at a time which is not reasonable in the circumstances. There is other provision in section 135 of the Public Works Act 1981 for entry at any time for the same purpose where there is imminent danger to life or property. The Committee remains of the opinion that exercise of the power under section 19 should be restricted to reasonable times.

Geothermal Energy Act 1953

Section 6

This section provides that reasonable notice of the intended entry be given "when practicable". The Department indicated that it considered reasonable notice to be notice of not less than 10 days and "when practicable" to mean where the owner can be found. The Committee recommends full compliance with the notice principle.

International Energy Agreement Act 1976

Section 9

The Committee recommends that identification should be produced whenever this power is exercised.

Iron and Steel Industry Act 1959

Section 3

The Committee recommends that the power to enter private property should be express, not implied. If it is seen as a separate power from section 6 then it should be modified to comply with the notice and identification principles.

Section 6

The Committee recommends that these two powers be brought into line with similar ones in the Mining Act 1971.

Mining Act 1971

Section 12

The Committee recommends that this provision be amended to comply with the identification principle.

Section 39

The Committee recommends that:

- (a) this provision be amended to provide for seven days notice of entry as in the corresponding s.208 Coal Mines Act 1979; and
- (b) consideration be given to providing a right of objection.

Section 55

The Committee recommends compliance with:

- (a) the notice principle; and
- (b) the identification principle.

Section 87

The Committee recommends compliance with the express power principle.

Section 112

This power appears to comply with all principles.

Section 200

This provision does not comply with notice and identification principles. Notice may defeat the object of the entry, but the Committee recommends that provision should be made for the inspector to show evidence of his identity and appointment.

Petroleum Act 1937

Section 28

The Ministry's view is that notice should be required only where practicable because on some occasions an owner or occupier cannot be found. As in s.6 of the Geothermal Energy Act 1953 the Committee considers that there should be a greater onus to give notice before preliminary work could commence especially as preliminary work may be of a substantial nature. The Committee recommends full compliance with the notice principle.

Section 46

The Committee recommends compliance with the identification principle.

Section 74

The Ministry accepted that entry should be at reasonable times and that identification should be produced. The Committee recommends accordingly.

Section 75

The Committee recommends compliance with:

- (a) the reasonable times principle; and
- (b) the identification principle.

Quarries and Tunnels Act 1982

Sections 7, 41 and 71

The Committee recommends full compliance with the identification principle.

Section 69

This power appears to comply with all principles.

MINISTRY OF FOREIGN AFFAIRS

Territorial Sea and Exclusive Economic Zone Act 1977

Section 24

This power appears to comply with all principles.

NEW ZEALAND FOREST SERVICE

Forest and Rural Fires Act 1977

Section 36(1)(e)

The Committee considers that this was a situation which justifies an exception to the general objective belief principle. It is an emergency power used to save both lives and property from the ravages of fire.

Section 39

This power appears to comply with all principles.

Section 58

The Committee recommends that:

- (a) identification should be carried and produced on entry and subsequently if required; and
- (b) notice should be given except where the circumstances require otherwise.

Forest Disease Control Regulations 1967

Regulation 13

The Committee recommends compliance with the identification principle.

Forests Act 1949

Sections 42 and 43

The Committee recommends, and the Forest Service agrees that a judicial warrant requested in writing and on oath should be required in both sections and that there should be a specific provision affirming the privilege against self-incrimination in s.43.

Section 69(2)

The reasons advanced by the Department do not justify the casting of the power of entry in such wide terms. The Committee recommends compliance with:

- (a) the reasonable times principle; and
- (b) the identification principle; and
- (c) the objective belief principle; and
- (d) the notice principle; and
- (e) the precise powers principle.

Section 70(1)(d)

The Committee recommends compliance with:

- (a) the identification principle; and
- (b) the notice principle.

Section 70(1)(e)

The Committee recommends compliance with:

- (a) the identification principle; and
- (b) the dwellinghouse principle.

Timber Floating Act 1954

Section 18

The Forest Service accepted the Committee's recommendation that entry be restricted to the day time, rather than the present wording of "from time to time". The Committee further recommends that objections to entry on private property should be directed to the District Court rather than to the Minister.

Wild Animal Control Act 1977

Section 13

The Committee recommends that this power be amended to comply with the evidence/warrant principle.

Section 14

The Committee recommends compliance with:

- (a) the identification principle; and
- (b) the precise purposes principle.

Section 15

The Committee recommends:

- (a) amendments to comply with
  - (i) the precise purposes principle; and
  - (ii) the identification principle; and
  - (iii) the objective belief principle; and
- (b) that the Forest Service give consideration to including a right of challenge.

Section 16

The Committee recommends that:

- (a) the condition of entry should be objectively expressed; and
- (b) the provisions for appeal in this section and in section 20 should be amended to provide for appeals from the Director-General to an independent authority, not to the Minister.

DEPARTMENT OF HEALTH

Burial and Cremation Act 1964

Section 52

The Department has agreed that entry should be restricted to reasonable times, that notice should be given before entry and that an inspector should be required to produce proof of his identity. The Committee also notes that s.52 does not comply with the evidence/warrant principle. The Department argued that a judicial warrant obtained in writing and on oath was not necessary because no inspector had been appointed under this section in living memory and the possibility of the control of these cemeteries being transferred to local authorities is under investigation. However the Committee has decided that a case for an exception has not been made out if this power is to continue to be on the statute books. The Committee accordingly recommends compliance with:

- (a) the reasonable times principle; and
- (b) the notice principle; and
- (c) the identification principle; and
- (d) the evidence/warrant principle.

Clean Air Act 1972

Section 43

The Committee recommends that the section be amended to comply fully with the identification principle.

Dental Act 1963

Section 50

We were advised that this power had never been used. The Department put forward no objection to the abolition of this section. The Committee recommends that it be repealed.

Food Act 1981

Section 12

The Committee recommends that identification should be produced whenever this power is exercised.

Health Act 1956

Section 71

The Committee was satisfied that compensation should continue to be determined by the District Court. No change is recommended.

Section 77

The Committee recommends that this section be amended to comply with the identification principle.

Sections 81 and 82

These sections do not comply with the objective belief principle. The Committee considers that as these sections concern individual privacy to a certain extent and could also extend to commercial premises the subjective opinion of a local authority is not an appropriate basis for a decision to disinfect premises. Accordingly it is considered the general principle should not be departed from. The Committee recommends that these sections be amended to meet these principles.

Sections 101 and 111

The Committee recommends that these sections be amended to comply with the identification principle.

## Section 128

The Committee considers that notice of entry should as a general rule be given, but accepts that it may not be possible in some exceptional circumstances. The power is expressed as being "for the purposes of this Act". These purposes may transcend those in particular sections. This would offend the precise purposes principle and we have not been persuaded that so wide a power is justified. The Department acknowledged that it may be possible to define purposes more closely and the Committee recommends that this be done with safeguards appropriate to each according to the principles in this report.

Hospitals Act 1957

## Section 148

The Committee considers it is not necessary for entry to be restricted to reasonable times or for the purposes to be specified, given the nature and purpose of the power. The identification principle, however, should be complied with. The Committee recommends accordingly.

Human Tissue Act 1964

## Section 8

The Committee recommends that this section be amended to conform with the identification principle.

Medicines Act 1981

## Section 63

The Committee recommends that identification should be produced whenever this power is exercised.

Misuse of Drugs Act 1975

## Section 18

This section does not comply with the express purposes principle. However, the New Zealand Police argued that the power was vital to their operations and the Committee agrees that an exception is justified.

## Section 19

The Committee recommends compliance with the identification principle. Where a uniformed officer exercises the power his or her uniform will be sufficient identification. However, where a plain clothes officer seeks to exercise it he or she should produce identification.

Physiotherapy Amendment Act 1953

Section 11

This provision appears to comply with all principles.

Radiation Protection Act 1965

Section 24

The Committee recommends that this power be amended to fully comply with the identification principle.

Toxic Substances Act 1979

Section 47

The Committee recommends compliance with the identification principle.

Tuberculosis Act 1948

Section 8

The Committee recommends that the power be amended to conform with the identification principle. The Committee enquired whether the power should be expressed objectively and, although the Department made no comment on this point, the Committee acknowledges that this may be an exceptional case.

HOUSING CORPORATION

Building Performance Guarantee Corporation Act 1977

Section 35

The Committee recommends that identification, including evidence of authority, should be produced whenever this power is exercised.

INLAND REVENUE DEPARTMENT

Inland Revenue Department Act 1974

Section 16

The Committee accepts the Department's view that a requirement for notice of entry would frustrate the purpose of entry. The Department's response does not persuade us that the section should not be amended to condition it on an objective test rather than an subjective one.

Accordingly the Committee recommends compliance with:

- (a) the objective belief principle; and
- (b) the reasonable times principle; and
- (c) the identification principle fully.

DEPARTMENT OF INTERNAL AFFAIRS

Cinematograph Films Act 1976

Section 99

The Committee suggested that it be made clear whether the principle against self-incrimination is intended to be abrogated in s.99(1). The Department indicated that while it was not aware of any cases of self-incrimination arising from cinematograph inspections, it would not like to see the general principle against self-incrimination affirmed. That is not sufficient justification for departure from the general principle. The Committee recommends amendments to comply with:

- (a) the questions principle; and
- (b) the precise powers principle; and
- (c) the identification principle.

Civil Defence Act 1962

Section 52

This is a very wide power but it is obviously necessary in this context.

Clause 60 of the Civil Defence Bill is likewise acceptable and the Committee notes improvements in some respects.

Dog Control and Hydatids Act 1982

Section 14(3)

The Committee recommends compliance:

- (a) fully with the identification principle; and
- (b) with the reasonable times principle.

Fire Service Act 1975

Section 28(4)

The Committee initially suggested that the words "other emergency" should be amplified. The Department, however, indicated that it would not be feasible to specify what would constitute "other emergency", in view of the wide range of situations in which fire service personnel and equipment may be engaged. This is accepted by the Committee as a valid basis for departure from the precise purposes principle.

In section 28(4) (b) and (c) the tests are subjectively worded and, to comply with the objective belief principle, should be reworded. The Department argued that these two provisions recognise a necessary discretion in the Chief Fire Officer or person in charge of the brigade, having regard to the impracticability of defining the other emergencies to which brigades may be called. Also, a catch-all phrase would inevitably be required to ensure that brigade assistance at an emergency was not precluded because a particular sort of emergency had not been identified in the definition. The Committee accepts that this is a justified exception.

Section 29

The Committee recommends that:

- (a) identification should be carried and produced on entry and at any subsequent time if so required; and
- (b) notice of entry should be given except where it would frustrate the purpose of the entry.

Section 36

This power appears to comply with all principles.

Gaming and Lotteries Act 1977

Section 117

This power appears to comply with all principles.

Section 135

Although this section does not comply with the notice principle, the Committee considers that the Department's objection that prior notice of entry would defeat the purposes of inspection justifies an exception to the general rule.

The Committee recommends that identification should be produced on entry and at any subsequent time if so required.

Historic Places Act 1980

Section 45

This section provides that notice is to be given "where practicable". The Committee recommends that the legislation should require that reasonable efforts should be required to be made to notify the owner and occupier of the land of the intended entry.

Housie Regulations 1975

Regulation 14(3)

The Committee recommends that identification should be produced on entry and at any subsequent time if required.

Impounding Act 1955

Sections 22 and 36

These powers appear to comply with all principles.

Section 39(2)

The Committee recommends, and the Department agrees, that 24 hours' notice should be given.

Land Drainage Act 1908

This Act is currently under consideration for eventual inclusion in the proposed Water and Soil Bill, and the Department has agreed that the Committee's comments set out below will be taken into consideration.

Section 17

The Committee recommends compliance with:

- (a) the identification principle; and
- (b) the notice principle; and
- (c) the objection principle.

Section 18

A right of objection is required. The Committee has suggested possible wording to the Department.

Section 19

The Committee recommends compliance with:

- (a) the notice principle; and
- (b) the identification principle; and
- (c) the express power principle.

Sections 23 and 27

The Committee recommends compliance with:

- (a) the express power principle; and
- (b) the objection principle.

Sections 21,29,61 and 62

These powers appear to comply with all principles.

Local Drainage Acts

These should contain express provision for notice of entry and identification. The Department suggested they incorporate the condition established in sections 238 and 710 of the Local Government Act 1974. The Committee agrees and recommends amendments.

Local Government Act 1974

Section 238

The Committee suggested that the purposes for entry should be specified. The Department agreed. The identification principle is not complied with and the Committee recommends amendment in these respects.

Section 348

The Committee recommends compliance with the challenge principle. The Department agrees.

Section 710

The Committee recommends full compliance with the identification principle.

Racing Act 1971

Section 60(2)-(4)

An exception to the general rule that notice of an intended entry be given can be justified on the ground that it would defeat the purpose of the entry. The Department has accepted the Committee's suggestions and the Committee recommends amendments in the following respects:

- (a) entry should be limited to reasonable times; and
- (b) inspectors of totalisators should carry identification and be required to produce it; and
- (c) a provision affirming the privilege against self-incrimination should be included.

The Department argued that the objective belief principle was not appropriate in the circumstances as the inspectors required wide powers following entry in the public interest. The Committee considers that this is a justified exception.

Rating Act 1967

Section 29(3)

This Act is currently being reviewed and the Department will take the Committee's suggestions into consideration. In particular, the Department agrees that a valuer should be required to carry and produce some form of identification. The Department does not consider that the question of self-incrimination will arise, and would favour entry being restricted to "... all land and buildings ... at such times and under such conditions as are reasonable having regard to the business therein" after 24 hours notice has been given to the owner or occupier. The Committee recommends amendments in these respects and further recommends that the privilege against self-incrimination should be affirmed.

River Boards Act 1908

Section 76(b)

The Committee recommends that this provision be redrafted to make it clear that it refers to exclusive possession for a temporary period as opposed to compulsory acquisition.

Section 77

The Department agreed that a right of objection should be introduced similar to s.708(2)(b) Local Government Act 1974. The Committee recommends that amendment.

Wildlife Act 1953

Section 39(1)(f)

The Committee suggested that the exercise of this power be restricted to police officers when acting as rangers. The Department, however, argued that this would result in serious breaches of the Act going undetected. This is considered to be a justified exception to the general rule.

Section 59

The Committee recommends compliance with the objective belief principle. The Department has expressed no objection to such an amendment.

DEPARTMENT OF JUSTICE

District Courts Act 1947

Sections 85,99 and 103

The New Zealand Police noted that the words "or constable" could be deleted in each of these sections as the warrants issued in each case could be executed more appropriately by a court bailiff. In areas where there are no court bailiffs police constables can be appointed as bailiffs under s.15.

Guardianship Act 1968

Section 19

This section does not comply with the identification or evidence/warrant principles. A problem might arise in this situation however where there is no-one to whom a warrant to enforce a custody or access order can be produced, except the child in question. The Committee recommends that:

- (a) the section be amended to stipulate that the warrant be produced to any person in charge of the child; and
- (b) except where the warrant is being executed by a constable in uniform, evidence of the identity of the person executing the warrant, should be produced to any person in charge of the child.

Indecent Publications 1963

Section 25

This power appears to conform with all principles.

Infants Act 1908

Section 32

The New Zealand Police noted that in the light of the provisions in sections 7 and 8 of the Children and Young Persons Act 1974 this section could be repealed without an adverse effect on the protection of children.

Insolvency Act 1967

Section 65

This section appears to comply with all principles.

Land Transfer Act 1952

Section 171

This power appears to comply with all principles.

Massage Parlours Act 1978

Section 35

This section does not comply with the precise purposes principle. The New Zealand Police noted in their reply that massage parlours are used for a variety of criminal purposes and that entry is used for criminal control in general. An exception to the general principle is considered justified.

Motor Vehicle Dealers Act 1975

Sections 5 and 61

These sections contain implied powers of entry. The Committee recommends that:

- (a) the provisions be redrafted in the the form of an express power; and
- (b) section 61 be redrafted to comply with the reasonable times principle.

Pawnbrokers Act 1908

Section 29

The Committee recommends that:

- (a) there should be a written application on oath to obtain a judicial warrant; and
- (b) the provision should be redrafted in more modern language.

Private Investigators and Security Guards Act 1974

Sections 45 and 46

These powers appear to comply with all principles.

Sale of Liquor Act 1962

Section 170

This section, which contains an implied power to enter chartered clubs, should be rewritten to comply with the express power principle. The Committee recommends amendments to comply with:

- (a) the reasonable times principle; and
- (b) the identification principle; and
- (c) the express power principle.

Section 209

This section provides that the Police may enter licensed premises "at any time". The Department noted that such a power is essential to prevent drinking outside authorised hours on licensed premises. In addition, under s.209(2) it is an offence to refuse or fail to admit a member of the Police exercising the power of entry under this section, indicating that it is intended that access be available at any time. The Committee is divided about whether this constitutes a justified exception from the reasonable time principle.

Sections 223,224,265,266 and 271

These powers appear to comply with all principles.

Second Hand Dealers Act 1963

Section 16

This section contains an implied power of entry. The Committee recommends that it be redrafted as an express power of entry.

DEPARTMENT OF LABOUR

Agricultural Workers Act 1977

Section 6

The Committee considered that, to protect the occupier's privacy, notice of the intended entry and inspection should be provided by the employer where practicable. Because the inspection is for the benefit of the employees an exception to the notice principle is recognised in this case.

The Committee recommends that:

- (a) a notice indicating that an entry and inspection has occurred should be left at the premises; and
- (b) the inspector should produce identification.

Aircrew Industrial Tribunal Act 1971

Section 35

This power appears to comply with all principles.

Apprentices Act 1948

Sections 13,39 and 42

The Committee recommends that these provisions, and clause 49 of the Apprenticeship Bill 1982, should comply with the identification and questions principles, and in these cases the law should affirm the privilege against self-incrimination.

Bush Workers Act 1945

Section 5

The Committee recommends compliance with the identification principle.

Construction Act 1959

Section 7

The Committee recommends compliance with the identification principle.

Dangerous Goods Act 1974

Sections 19 and 20

The Department accepted the suggestion that the power of forced entry would fit more logically into s.19 rather than s.20. In addition, this would bring the entry provisions of the Dangerous Goods Act into line with the corresponding provisions of the Explosives Act.

The Committee had noted that the section does not comply with the evidence/warrant principle. The Department, however, argued that in emergency situations, where human lives or property are endangered, an inspector must be able to enter premises with a minimum of delay. The Committee considers that this is a justified exception to the general principles.

The Committee recommends that the section be amended to fully comply with the identification principle.

Employment Agents Act 1908

Section 9

The Committee recommends that the section be amended to fully comply with the identification principle.

Equal Pay Act 1972

Section 16

The Committee recommends that this section be amended to fully comply with the identification principle.

Explosives Act 1957

Section 9

Similar points were raised in respect to this section as were in relation to sections 19 and 20 of the Dangerous Goods Act 1974 regarding emergency situations. The Committee, again, considered that the same exceptions were justified and recommends that amendments be made to comply with the identification principle.

Factories and Commercial Premises Act 1981

Section 5

The Committee does not insist on prior notice because the entry is for the interests of the workers. Furthermore there is an International Labour Organisation Convention number 81 "Convention concerning labour inspection in commerce and industry" which New Zealand is bound by, and which requires random inspection.

The Committee recommends:

- (a) compliance with the precise purposes principle; and
- (b) that an inspector should be required to produce identification (issued pursuant to s.8) in every instance.

Holidays Act 1981

Section 31

The Department agreed with the Committee's comment that the power of entry should be express. Concerning the time of entry the Department noted that New Zealand was bound by the International Labour Organisation Convention No.81 which requires that inspectors are able to enter any workplace liable to inspection at any hour of the day or night without previous notice. The Committee considers that this was a justified exception. The Committee recommends that identification should be shown every time the power is exercised.

Section 32

The Committee considers that, to protect the occupier's privacy, notice of the intended entry and inspection should be provided by the employer where practicable. Because the inspection is for the benefit of the employees an exception to the principle is recognised in this case.

Machinery Act 1950

Section 6

This power appears to comply with all principles.

Shearers Act 1962

Section 6

The Committee considers that, to protect the occupier's privacy, notice of the intended entry and inspection should be provided by the employer where practicable. Because the inspection is for the benefit of the employees an exception to the principle is recognised in this case.

Shop Trading Hours Act 1977

Section 22

The Department indicated that this power is used to prevent shopkeepers from flouting the Act's provisions. The Committee recommends that this section be amended to comply with the identification principle.

Technicians Training Act 1967

Section 18

The Committee recommends that this section be amended to comply with the identification principle.

Waterfront Industry Act 1976

Sections 40 and 48

These powers do not comply with the identification principle. The Committee has not had the Department's view and makes no formal recommendation; but suggests that consideration be given to amending s.48 to comply with the principle.

Weights and Measures Act 1925

Section 4

The Committee recommends that this section be amended to comply with the identification principle.

DEPARTMENT OF LANDS AND SURVEY

Land Act 1948

Section 26

The Committee recommends that:

- (a) notice of entry should be given where practicable; and
- (b) identification should be carried and produced on entry and at any subsequent time if required.

Section 34

Subsection (2) provides for evidence of authority to enter to be shown "if required". This falls short of the Committee's identification principle and the Committee recommends full compliance.

Land Settlement Promotion & Land Acquisition Act 1952

Sections 21 and 22.

The Committee recommends, and the Department agrees, that identification should be produced whenever this power is exercised, and that prior notice should be given. The Committee also recommends that the power should be subject to an objective rather than a subjective test. It does not accept the Department's argument that such a move would unduly restrict the power.

National Parks Act 1980

Sections 65 and 66.

The Committee agrees with the Department that it would be unreasonable to require that a judicial warrant be obtained in this situation.

The Committee recommends that:

- (a) the power should be limited to exercise at times which are reasonable in the circumstances (reference is made to paragraph 3.24 in the main text of this report); and
- (b) identification should be produced.

Swamp Drainage Act 1915

Section 6

The Committee recommends, and the Department agrees, that an officer entering pursuant to this power should carry identification and produce it on entry and at any subsequent time if required.

DEPARTMENT OF MAORI AFFAIRS

Maori Affairs Act 1953

Section 371A(4)

The Committee recommends that:

- (a) entry should be restricted to reasonable times; and
- (b) identification should be carried and produced on entry and at any subsequent time if required; and
- (c) notice of an intended entry should be provided except where circumstances require otherwise.

Section 407

The Committee recommends that:

- (a) entry under this section should be restricted to reasonable times; and
- (b) notice should be given or a warrant obtained; and
- (c) identification should be produced on entry and at any subsequent time if required.

NEW ZEALAND POLICE

Arms Act 1958

Section 24

The Committee recommends that:

- (a) this section which has an implied power of entry should be reframed to be express; and
- (b) in this situation production of identification should be required except where the circumstances do not allow. A uniform will be sufficient identification.

Section 25

The New Zealand Police were asked whether identification was necessary or a uniform was sufficient identification. The committee recommends that in the absence of a uniform and even in a situation of danger an officer should offer identification when exercising this power.

In addition, the Committee recommends that the section require that an officer provide a written report to be submitted after each entry as is required in s.8 of the Children and Young Persons Act.

POST OFFICE

Post Office Act 1959

Sections 143,144 and 145

The Committee recommends that identification should be carried and produced on entry and at any subsequent time if required. Although the Department expressed opposition to the Committee's suggestion, the Committee saw no reason to depart from principle.

Section 146

The Committee recommends that notice should be given except where the circumstances would make this impracticable.

Section 152

This power appears to comply with all principles.

Leased Circuit and Leased Apparatus Regulations 1976

Regulations 20 and 30

The Committee recommends, and the Department agrees, that in both cases identification should be required to be produced on entry.

Radio Regulations 1970

Regulation 60

The Committee recommends that identification should be carried and produced on entry and at any subsequent time if required.

Telephone Regulations 1976

Regulations 67 and 106

The Committee recommends, and the Department expressed no objection to, the following amendments:

- (a) identification should be carried and produced on entry and at any subsequent time if required; and
- (b) notice of an intended entry should be given in accordance with the general principle.

Regulation 111

The Department suggested that it would be inappropriate for notice of entry to be required, but the Committee sees no reason to depart from the notice principle. The Committee recommends that:

- (a) notice of intended entry should be given except where that is impracticable; and
- (b) identification should be carried and produced on entry and at any subsequent time if required.

PUBLIC TRUST OFFICE

Public Trust Office Act 1957

Section 98

The Committee enquired why the Public Trustee needs these statutory powers when a private trustee does not.

The Public Trust Office responded that, because of the scale on which it operates, a general power of entry such as that contained in s.98 is necessary to enable the Public Trustee to administer estates properly and to discover assets. Additionally, the Public Trustee performs a wide variety of functions and activities which are seldom performed by private persons (for example, managing the estates of protected persons under the Mental Health Act). The Committee accepts that the statutory power of entry is required. The Committee recommends that:

- (a) notice should be given; and
- (b) the identification principle be conformed with.

NEW ZEALAND RAILWAYS CORPORATION

New Zealand Railways Corporation Act 1981

Sections 31 and 52

The Committee is concerned that neither of these sections precisely states who may exercise these powers. The Corporation has replied that these provisions are the minimum essential for safe railway operation and for the efficient execution of essential railway works and that it is not practicable to define more closely who may be required to exercise the powers. The Committee accepts that explanation.

In addition, the Committee recommends that a person acting on behalf of the Corporation in either of these situations should be required to carry and produce identification on entry and at any subsequent time if required.

RESERVE BANK OF NEW ZEALAND

Reserve Bank of New Zealand Act 1964

Sections 28(3)(c) and 35

The Committee recommends that:

- (a) these powers of entry should be made express. (The Bank agrees with this proposal); and
- (b) notice of an intended entry pursuant to s.35 should be given; and
- (c) entry should be restricted to reasonable times.

DEPARTMENT OF SOCIAL WELFARE

Children and Young Persons Act 1974

Section 7

The Committee recommends, and the Department has agreed, that the warrant should be produced on entry rather than just carried.

Section 8

The Committee recommends that this power of entry should be restricted to times which are reasonable in the circumstances. Refer to paragraph 3.24 of the main report.

Section 28

The Department noted that administrative instructions require staff to produce the warrant to remove a child or young person to the parents, guardians or other persons from whom the child is removed. The Committee recommends that this provision should be incorporated in the statute.

Section 49

The Committee recommends that the section should be amended in these respects:

- (a) the implied power of entry in this section should be express; and
- (b) compliance with the identification principle.

The Committee accepted that the Director-General having been entrusted by the Court with care of the child, he should not be required to obtain a judicial warrant in the circumstances.

Section 81

The Committee recommends compliance with:

- (a) the reasonable times principle; and
- (b) the identification principle.

Child Care Centre Regulations 1960

Regulation 31

The Committee recommends, and the Department has agreed, that identification should be produced on entry.

Disabled Persons Community Welfare Act 1975

Section 22

The Committee recommends, and the Department has agreed, that identification should be produced on entry and at any subsequent time if required.

DEPARTMENT OF STATISTICS

Statistics Act 1975

Section 35

This section as re-enacted by the Statistics Amendment Act 1982 incorporated, and in fact went further than the Committee's suggestions.

DEPARTMENT OF TRADE AND INDUSTRY

Commerce Act 1975

Section 88

This power appears to comply with all principles.

MINISTRY OF TRANSPORT

Boilers, Lifts, and Cranes Act 1950

Section 6

The Committee recommends compliance with the identification principle.

Civil Aviation Act 1964

Section 21D

This section does not comply with the precise purposes principle. However, the Ministry indicated that to attempt to precisely define all the circumstances in which a right of access would be essential would achieve little and lead to difficulties when unanticipated situations arose. In these circumstances the Committee accepted that an exception was justified.

Civil Aviation Regulations 1953

Regulation 14

The Committee recommends compliance with the identification principle.

Harbours Act 1950

Sections 111 and 255

The Committee recommends that:

- (a) the purposes for which these powers may be exercised should be more precisely stated; and
- (b) a person exercising them should obtain a written warrant, carry identification and produce it on entry and at any subsequent time if requested.

Section 297

The Committee recommends that:

- (a) this section should be amended to comply with the reasonable times principle; and
- (b) the identification principle should be complied with; and
- (c) the final phrase "as a debt due to the Board" should be omitted. See the compensation principle paragraph 3.36.

General Harbour (Nautical and Miscellaneous) Regulations 1968

Regulation 52

The Committee recommends that:

- (a) the implied power should be express; and
- (b) the identification principle should be complied with; and
- (c) the challenge requirement principle should be complied with.

General Harbour (Ship, Cargo and Dock Safety) Regulations 1968

Regulation 7

The Committee recommends compliance with:

- (a) the identification principle; and
- (b) the reasonable times principle.

This section does not comply with the precise purposes principle. The Committee agrees that the Harbour Master requires broad powers, but recommends that the drafting be improved to clarify and make more precise the grounds on which the Harbour Master may act. One question is whether the power of entry applies other than to the cases of illegal fires and lights.

Hovercraft Act 1971

Section 5

This power appears to conform with all principles.

Marine Pollution Act 1974

Section 17

This power appears to conform with all principles.

Shipping and Seamen Act 1952

Sections 12 and 13

The Committee recommends compliance with the identification principle.

Section 13A

The Committee recommends:

- (a) that in accordance with the questions principle a protection against self-incrimination should be included in this section; and
- (b) compliance with the identification principle.

Sections 14(2)(a) & 15

The Committee recommends compliance with:

- (a) the identification principle; and
- (b) the questions principle.

Section 272

The Committee recommends compliance with the identification principle.

Section 316

This section appears to comply with all principles.

Section 344

This section appears to comply with all principles.

Section 355

The Committee recommends compliance with the evidence/warrant principle.

Section 377

The Committee recommends that:

- (a) the purposes for which this power may be exercised should be more precisely stated; and
- (b) a person exercising it should obtain a written warrant; and
- (c) a person exercising it should carry identification and produce it on entry and at any subsequent time if required.

Section 380

The Committee recommends:

- (a) compliance with the identification principle; and
- (b) that the final phrase "in the same manner as fines may be recovered under this Act" should be deleted. (The Ministry of Transport agreed with this recommendation).

Sections 442 and 444

These sections appear to comply with all principles.

Transport Act 1962

Section 144

This section does not comply with the identification or reasonable times principles. The Ministry of Transport noted that it would prefer that the phrase "any reasonable hour of the day" be incorporated because "reasonable times" would need to be qualified. The Committee, however, saw standardisation in drafting as important and consequently recommends amendments to bring the section into line with both of the above principles.

Section 178

The Committee recommends compliance with the identification principle.

THE TREASURY

Public Finance Act 1977

Section 27

The Committee questions whether this power can be justified because it gives the Government and local authorities powers in relation to contracts that individuals do not have.

If it is preserved it should be amended to comply with the identification and evidence/warrant principles.

VALUATION DEPARTMENT

Valuation of Land Act 1951

Section 7

The Department agreed that entry should be restricted to reasonable times and that identification should be produced on entry and subsequently if required. The Act is presently being revised and the alteration will be incorporated.

MINISTRY OF WORKS AND DEVELOPMENT

Public Works Act 1981

Sections 27, 110, 111, and 126

The Committee recommends that identification should be produced whenever these powers are exercised.

Sections 133, 141, 173 and 188

The Committee recommends that:

- (a) identification should be produced whenever these powers are exercised; and
- (b) exercise of the powers should be restricted to reasonable times.

Section 135

This power appears to comply with all principles.

Soil Conservation and Rivers Control Act 1941

Sections 21,23,132 and 135(c)

This Act is presently being reviewed and the Ministry informed us that the principles outlined in the interim report will be taken into account when it is redrafted.

Town and Country Planning Act 1977

Section 171

This section appears to comply with all principles but the Committee recommends that consideration should be given to how long the warrant should remain valid.

Water and Soil Conservation Act 1967

Section 26B(3)

This Act is currently being reviewed and the principles contained in the interim report will be taken into account when it is redrafted.

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