

FINDERS KEEPERS

SEARCH AND SEIZURE IN ENVIRONMENTAL CRIME

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Why important to prosecutors?

- To advise officials on procedures
- To inform presiding officers
- To assist in setting systems in place for preserving the integrity of exhibits
- To withstand attacks on the admissibility of evidence so obtained

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➤ RELEVANT LEGISLATION:

- CPA: Criminal Procedure Act 51 of 1977
- MLRA: Marine Living Resources Act 18 of 1998
- NEMA: National Environmental Management Act 107 of 1998

➤ ACRONYMS:

- VVA: Vessels, vehicles and aircraft
- FCO: Fishery Control Officer
- EMI: Environmental Management Inspector

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➤ MLRA and NEMA

- Powers of inspection
- Powers to stop and search
 - With a warrant
 - Without a warrant

➤ Relating to:

- VVA's (and pack animals!)
- Premises

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VVA's

➤ Powers of inspection

- FCO's: Vessels at sea – section 51 (2) MLRA
- EMI's: None

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VVA's (continued)

➤ With a warrant:

- FCO's: VVA's – section 51(1) MLRA
- EMI's: Not specific, but incorporates CPA provisions – section 31 H(5) NEMA

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VVA's (continued)

- Without a warrant:
- FCO's:
 - Section 51(3)(b) MLRA - reasonable suspicion
 - Section 51 (3)(a) MLRA - with consent
 - Section 51 (3)(a) MLRA - reasonable ground and delay would defeat object

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VVA's (continued)

- Without a warrant (continued)
- EMI's:
 - Section 31J NEMA - reasonable suspicion
 - Section 31J (6) and (7) - roadblock i.t.o. section 13 (8) SAPS Act
 - Section 31 K (4) re reasonable grounds and delay would defeat object covers only residential premises and not VVA's

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VVA's (continued)

- Seizure
 - Section 31J (2) NEMA simpler than section 51(c) MLRA, but same effect – anything used in commission of offence, or that can be used as evidence, may be seized

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Premises

- Powers of inspection:
 - FCO's: Fish processing establishment or any other place where fish products are kept or stored
 - EMI's: "Building, land or premises for the purpose of ascertaining compliance..."

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Premises (continued)

- With a warrant:
- FCO's:
 - Section 51 (1) MLRA re premises, but can FCO's apply for a warrant?
- EMI's:
 - Section 31 K (2) re residential premises (only) from magistrate (only)

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Premises (continued)

- Without a warrant
 - FCO's: Section 51(3)(a) MLRA
 - EMI's: Section 31K(4) NEMA
 - Almost identical with section 22 of CPA: Reasonable grounds and delay would defeat object, but:
 - CPA: General terms
 - MLRA: VVA's and premises
 - NEMA: Only residential premises

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- Return of VVA's on payment of security
 - Section 62 (2) MLRA
 - Section 34 (F) NEMA
 - Section 31 CPA

- Integrity of exhibits

- Live specimens

- Perishable products

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THANK YOU

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