

"Your vessel is your home!

What to do when the dollop-walloper visits."

My name is Chris Ayres, I a retired lawyer my areas of expertise are administrative law, taxation law and human rights. Being retired I cannot appear in court for anyone, nor can I give legal advice. Should you require legal advice or representation you must seek the aid of a practising lawyer either through a community legal service or private solicitor. What I outline in this article is merely legal information. You should seek legal advice from a practising lawyer and should not rely on what I have written.

Under common law, your vessel is your place of residence if it is as a judge once described it "The place of residence of an individual is determined ... by reference to where he eats, sleeps and has his settled or usual abode... he may also reside where habitually lives, even if this is in hotels or on a yacht or some other place of abode..." A houseboat is also included in the definition of a 'premise' in Queensland under the Residential Tenancies Act (Qld) 1994.

In taxation law, a vessel has long been seen as a place not just of residence (capital gains tax legislation is expansive and includes a vessel as a place of abode, goods and services tax law specifically includes a floating home and the Income Tax Assessment Act (1997) includes a "houseboat or other mobile home" as a 'dwelling'. Under taxation law, it is recently been decided that you can even have a 'home-office' for which you can claim a taxation deduction on a vessel!

Finally, the Criminal Code of Queensland also gives a lot of defence of a vessel:

278 Defense of possession of real property or vessel with claim of right

When a person is in peaceable possession of any land, structure, or vessel, with a claim of right, it is lawful for the person, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to defend the person's possession, even against a person who is entitled by law to the possession of the property, provided that he or she does not do grievous bodily harm to such person.

So your vessel is not a vehicle, it is a place of residence. As such you may claim the legal protection normally accorded a place or residence.

So what can we do?

1. Do not allow them right to board until the following steps are followed. These do not amount to obstruction, merely reasonable conditions to protect yourself (yes) and your place of residence from unlawful intrusion.
2. Request identification of the officer(s) concerned. They must produce it.
3. Make a note of date, time, place, name(s) or persons concerned, vessel used by the officers seeking to board and details of all questions asked and of your responses. Perhaps your partner could do this or you may choose to use a tape recorder. Remain calm. The log is a legal record that you may need to produce in court.
4. Photograph the officer(s) concerned and their vessel. Digital cameras are excellent for this. The photo is a legally admissible record of the parties concerned and is usually time and date stamped. It can be used to send through to Fisheries for confirmation that the officers concerned are acting lawfully. The photo can if you choose - be posted on a website or printed and displayed in public places.
5. Request the officer(s) produce a lawful warrant to enter, duly signed and prepared by a Magistrate or Justice of the Peace (under Section 77 (4)) "Unless entry is authorised by warrant, an authorised officer may only exercise the powers mentioned in section 125 for a place if its occupier consents to the use of the powers when consent for entry is given." A Harbour Master requires a duly executed warrant and I suspect it would be a brave magistrate indeed who would allow a mere Fisheries inspector to board a vessel and seize property without a warrant.
6. Do not resist or obstruct any officer(s) who still persist, but remind them that:
 - They are civilly liable under Section 76 for acts or damage caused through their negligence. Failure to obtain a warrant may be seen as negligence. Explain you are simply trying to protect them!
 - You are also entitled to compensation for damage under Section 110. Nervous shock claims can be rather large!
 - Any 'evidence' obtained without warrant may not be admissible in court. The first thing a good criminal lawyer does is question the validity of a warrant, ask any policeman!
 - Once aboard, photograph and record anything and everything that occurs.
 - Offer them a good cup of tea and remain calm and polite at all times.

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