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Can airport authorities search your phone or computer?

RN By Alexandra Fisher and Damien Carrick for Law Report

Updated Thu 14 Jun 2018, 1:35pm



PHOTO: The Australian Border Force says no examination is random. (Getty: Photographer is my life)

At no other time in history has airport security been so rigorous: travellers have come to expect pat downs, bag screenings and random drug detection tests.

But you might be caught by surprise if you're asked to surrender your phone or laptop for Australian Border Force (ABF) authorities to search.

Zaahir Edries, the president of the Muslim Legal Network of NSW, says the ABF's powers are "relatively broad".

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How broad?

"Anything you have on your phone, as a passenger, is open to scrutiny or interrogation by ABF officials," Mr Edries said.

Airport authorities **have the right to confiscate devices** and copy their contents.

"I think they're open to [copy and download everything] if it's something that allows them to continue in an investigation," Mr Edries said.

If you say no, the ABF can confiscate your phone and search it.

"The Border Force have the power to search and retain if you don't unlock your devices under the particular legislation," Mr Edries said.

Does it happen often?

Data on how often devices are searched and confiscated is not publicly available, but Mr Edries says **anecdotally it appears travellers are being checked frequently.**

His organisation is regularly asked to help people who believe they were unjustly stopped and questioned at the border, and who had their electronics confiscated.

"That's probably something I see or hear of every few weeks," Mr Edries said.

He cites a case from a few years ago where a Sydney man with a Lebanese background was stopped by border officials while travelling to Thailand for a holiday.

The man said the officials searched his phone and asked a series of questions about his travel plans including whether he intended to visit to the Middle East.

"He was quite shocked by those questions, because as far as he was concerned he was just going to Thailand for a holiday," Mr Edries said.

He described the man as "a regular, run-of-the-mill hardworking tradie", who has a Middle Eastern sounding name and was travelling at a time of heightened suspicion.



AUDIO: Can border officers demand your mobile devices at an airport without a warrant? (Law Report)

So they're just randomly searching travellers' phones?

The ABF says no examination is random and all movements across borders are screened.

When you fly, **airlines give the Home Affairs Department your details**, so authorities can identify passengers who "might be a risk to Australia border security".

The ABF says officers may question travellers and examine goods if they suspect a person may be breaching immigration, customs, biosecurity, health and national security laws.

"For example, objectionable goods, such as child exploitation material, are prohibited from importation into Australia," ABF said in a statement.

"Our officers are alert to the indicators that persons may be seeking to travel with this abhorrent material both in and out of Australia."

What about a warrant?

In the US, the Federal Trial Court in Massachusetts recently gave the green light to a trial where civil rights lawyers will argue that random searches at airports breach the Fourth Amendment, which protects against unreasonable searches and seizures.

The ruling came after 11 people claimed the US Government invaded their privacy by searching and seizing their smartphones and laptops when they returned from overseas.

The group included journalists, business people and a NASA scientist. They were from different races and backgrounds, but about half were Muslim.

"[They] are upstanding people who should not have this kind of thing happening to them," said lawyer Adam Schwartz, part of a team representing the plaintiffs.

"No-one has ever alleged that they were breaking the law, no-one says that they had any contraband with them."

In the US, officers can currently search without suspicion, but Mr Schwartz says officers should require a warrant before they start "ransacking" people's personal devices.



PHOTO: Airport authorities have the right to confiscate devices and copy their contents. (Getty: Jan-Otto)

"You know your cell phone is a window to the soul. You can see who you're talking to, what medicine you're using, what your political interests are...everything there is to know about you," he said.

"This is the kind of privacy intrusion that people reasonably do not expect from the government when they're coming home."

The recent court decision paves the way for a full trial which will rule on the constitutionality of the US Government's practice.

In Australia, **there are no grounds for a similar court action.**

Mr Edries says without a bill of rights, those types of protections against unreasonable searches and seizures don't exist.

He said it's important, therefore, that Australian authorities balance the need to provide security with upholding civil liberties.

Topics: law-crime-and-justice, terrorism, defence-and-national-security, information-technology, lifestyle-and-leisure, travel-health-and-safety, australia

First posted Thu 14 Jun 2018, 12:06pm

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