

# Anton Piller Orders Search and Seizure Orders

By Chris Patterson, Barrister

Anton Piller orders, which more conveniently referred to in Australia and England as search and seizure orders, are regarded as one of "the law's two nuclear weapons". The analogy with a nuclear warhead was drawn by Lord Donaldson in the English Court of Appeal because such orders strike without warning and can have devastating effects.

Anton Piller orders are not an exact equivalent to a criminal search warrant. A search warrant allows the police or the Serious Fraud Office to search a premise without the consent of the owner or occupier. An Anton Piller order directs the owner or occupier to provide their consent for the search, unless they immediately apply for the order to be discharged. A person served with an Anton Piller order will be in contempt of the Court unless they either consent to the search taking place or immediately apply to have the order discharged.

The purpose of an Anton Piller order is to preserve evidence. Anton Piller orders are appropriate when there is a real risk that the evidence would be destroyed or placed beyond the reach of the Court.

The first Anton Piller type order was made in England during the mid 1970s. The order became very popular during the 1980s which lead the English Courts to become very concerned as to its common use. The English Courts introduced certain safeguards to curb the number of applications seeking Anton Piller orders. Those safeguards included the requirement that the order be served and its execution be supervised by an independent lawyer.

There are three requirements that must be met to justify the granting of an Anton Piller order. The first, the applicant must establish that they have a strong arguable case against the respondent. The second, there must be evidence that the respondent has in his or her possession or control the relevant evidence. Finally, there must be a real risk that the evidence will be destroyed or placed beyond the reach of the Court should notice be given to the respondent of the order.

The origin of Anton Piller orders is found in intellectual property cases such as copyright piracy. However, in other jurisdictions such as employment relations, the Employment Court and the Employment Relations Authority have in recent years granted as many Anton Piller orders as the High Court.

Security consultants and private investigators have a very important roll to play in Anton Piller orders. First, the application has to be supported by strong compelling evidence. Evidence relating to copyright infringement, breaches of restraints of trade and/or fidelity can often be obtained more efficiently by a good private investigator. Secondly, private investigators can assist with the intelligence gathering process in preparation for the execution of an Anton Piller order. It is very important to know where the respondent will be and their likely movements during the execution of the order and the general layout of the premises to be searched. A security consultant can add significant value to the execution process in ensuring that high emotions do not become too explosive.

The securing and gathering of electronic evidence is now a very common outcome sought from the execution of an Anton Piller order. An experienced IT forensic expert is an essential member of the execution team. Ideally, the private investigator will be able to provide the details of the likely number of PCs (desktops and laptops), servers and storage mediums that may need to be seized or cloned on site. The IT forensic expert should have sufficient acquisition equipment to enable evidence to be gathered. Additionally, a portable computer with a wireless internet connection is sometimes advisable. Acquisition and analysis of electronic evidence are separate matters that have their own considerations. Analysing evidence can be a costly process and is perhaps best left until sensible arrangements can be made with the defendants.

I have been involved as counsel in obtaining and executing seven Anton Piller orders in the past three years. I believe that the key to a successful execution of the order is planning. Pre execution planning meetings are very important. Every person involved has to know their role and what they need to do during the execution process.

The following items are very helpful when executing Anton Piller orders: a receipt book for creating an inventory and receipting items seized, evidence bags and boxes, digital camera and digital dictaphone.

Executing Anton Piller orders are never easy or stress free. A campervan/mobile home is worth far more than the couple of hundred dollars they cost to hire for a day. Having meeting and storage space, cooking and coffee facilities, a toilet and power points is far more desirable than sitting for hours on end in a cramped medium sized Holden with 4 others prior to and at times during the execution of the order.

Obtaining and executing Anton Piller orders is far from a routine matter. The likelihood of success can be increased by having an experienced team and through careful preparation.

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