

STANDARD OPERATING PROCEDURE 3 ENTER AND SEARCH WARRANTS

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APPROVED


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COMMISSIONER

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PURPOSE

The purpose of this Standard Operating Procedure (SOP) is to provide direction to investigators when exercising the powers of a warrant to enter and search issued under section 31 of the *Independent Commission Against Corruption Act 2012* (ICAC Act) and to provide appropriate information about the rights, obligations and liabilities of persons in relation to whom powers are exercised under the ICAC Act.

SCOPE

This SOP applies to all investigators appointed by the Commissioner or seconded to assist the Commissioner under section 14 of the ICAC Act.

WARRANT

A warrant issued by the Commissioner authorises an investigator or police officer to enter and search:

- a) a place specified in the warrant occupied or used by an inquiry agency, public authority or public officer; or
- b) a vehicle specified in the warrant owned or used by an inquiry agency, public authority or public officer.

A warrant issued by a Justice of the Supreme Court authorises an investigator or police officer to enter and search any place or vehicle specified in the warrant.

WARRANTS TO ENTER AND SEARCH

INVESTIGATOR'S RESPONSIBILITIES

An investigator or police officer who has been issued with a warrant to enter and search under section 31(1) or 31(2) of the ICAC Act, when executing that warrant must:

- *Record the execution* of the warrant by means of a video recorder, unless it is not reasonably practicable to do so.
- Show the *original warrant* to the occupier of the place or to the owner or driver of the vehicle (as the case may be) to whom it applies, without relinquishing physical possession of the original warrant unless it is not reasonably practicable to do so.
- *Provide a copy* of the warrant (clearly marked as a copy) to the occupier of the place or to the owner or driver of the vehicle (as the case may be) to whom it applies, unless it is not reasonably practicable to do so.
- Provide that person with the *information sheet* detailing their rights, obligations and liabilities in regard to the warrant (refer Appendix A).
- Comply with all conditions stipulated in the warrant.

- Exercise the power to break in only if reasonable attempts to gain entry have otherwise failed or the person exercising control over the place or vehicle refuses to cooperate in facilitating entry by other means at that time (refer to 'Requirements' below).
- Exercise the power to seize and retain a thing, or issue a retention order in respect of it, only after forming the requisite suspicion and/or belief in ss 31(7)(c)(v) or (vii) of the ICAC Act.
- Conduct a search of a person of a different gender from the investigator only if it is not reasonable or practicable for a person of the same gender to do so.
- When searching a person, only resort to the use of reasonable force to remove an item from a person if the person does not comply with a requirement to remove or surrender the item (refer to 'Requirements' below).
- Give the occupant of any premises or vehicle the subject of a search a reasonable opportunity to make a claim of privilege pursuant to sch 3 of the ICAC Act in respect of any document or thing a police officer or investigator intends to inspect, seize or copy under the warrant. This will include, at a minimum, advising the person of the right to make a claim when commencing the execution of the warrant (or as soon as possible thereafter) and giving him or her the opportunity to seek legal advice about making such a claim. If an investigator or police officer becomes aware of another person who may be entitled to make a claim under sch 3 in respect of a document or thing it is intended to inspect, seize or copy under the warrant the investigator or police officer should give that person a reasonable opportunity to make a claim. If the occupant of a premises or person who may be entitled to make a claim over a document or thing it is intended to inspect, seize or copy under a warrant is not able to be contacted the police officer or investigator issued with the warrant should seek direction from the Director Investigations.
- If a person claims privilege over a thing to be seized, require the claimant to seal the document or thing in an envelope before handing it over, and as soon as reasonably practicable notify the Commissioner and give the document or thing to the proper Officer of the Supreme Court : Schedule 3 Clause 4.

REQUIREMENTS

An investigator or police officer has the power to 'require' a person to do certain things during the course of exercising powers under section 31 of the ICAC Act.

Sections 31(9) and (10) provide;

(9) An investigator or police officer may require an occupier of a place or a person apparently in charge of a document or thing to give to an investigator or police officer, or a person assisting an investigator or police officer, such assistance as is reasonably required by the investigator or police officer for the effective execution of a warrant.

(10) In searching a person under this section, the investigator or police officer—

- (a) may run his or her hands over the person's outer clothing; and*
- (b) may require the person to remove a coat, jacket, hat or shoes the person is wearing, and may run his or her hands over the person's remaining outer clothing; and*

- (c) *if the investigator or police officer sees or detects any thing that he or she reasonably suspects is, or contains, evidence of a prescribed offence, may require the person to surrender that item for inspection; and*
- (d) *may use reasonable force to remove an item from a person if the person does not comply with a requirement to remove or surrender the item under paragraph (b) or (c); and*
- (e) *may inspect an item that a person has removed or surrendered, or that has been removed from a person; and*
- (f) *must conduct the search in a manner that affords, to the extent that the circumstances of the search permit, reasonable privacy to the person being searched; and*
- (g) *must conduct the search as quickly as is reasonably practicable in the circumstances of the search.*

The failure of a person to comply with the investigator's or police officer's requirements can amount to the offence of obstruction pursuant to section 33 of the ICAC Act.

When providing the information sheet (Appendix A) to a person the investigator or police officer must bring the requirements and powers in sub-sections (9) and (10) to the attention of that person. If a direction is to be given pursuant to subsections (9) or (10) it is recommended that the direction is given in the following terms:

"Pursuant to section 31 of the Independent Commission Against Corruption Act 2012 I require you to (insert requirement e.g. provide assistance, unlock the shed, remove jacket).

If you refuse or fail to (unlock the shed, remove jacket etc.) without lawful excuse, you may be arrested and/or charged with the offence of obstruction. The offence is punishable by a maximum penalty of \$10,000 or imprisonment for 2 years".

NOTE: The warrant will expire if not executed at the expiration of one month from the date of issue.

REFERENCES

Independent Commission Against Corruption Act 2012

SOP 4 Seizure and Retention Orders

SOP 5 Arrest

DOCUMENT HISTORY

DATE	ACTION	PREPARED BY
04 Jul 2013	SOP created	Director Operations
03 Jul 2014	SOP amended	Director Operations
01 Sep 2014	SOP amended	Director Operations
23 Dec 2015	SOP reviewed and amended	Director Operations
18 Oct 2016	SOP reviewed and amended	Director Investigations
16 Aug 2017	SOP reviewed and amended	Director Investigations
20 Mar 2018	SOP name reviewed and amended	Director Investigations

27 May 2020	SOP reviewed and amended	Director Investigations
8 October 2021	SOP reviewed and amended	Director Investigations
13 September 2022	SOP reviewed and amended	Director Investigations
16 Feb 2023	SOP reviewed and amended	Deputy Commissioner

APPENDIX A – INFORMATION SHEET

Information about this warrant

What is this document?

This is a warrant issued pursuant to section 31 of the Independent Commission Against Corruption Act 2012 (SA) (“the Act”) and authorises an investigator or police officer—

- (a) to enter and search and, if necessary, use reasonable force to break into or open—
 - (i) the place or vehicle to which the warrant relates; or
 - (ii) part of, or anything in or on, a place or vehicle to which the warrant relates; and
- (b) to give directions with respect to the stopping or movement of a vehicle to which the warrant relates; and
- (c) in the course of executing the warrant—
 - (i) to take photographs, films or audio, video or other recordings; and
 - (ii) to examine, copy or take extracts from a document connected with the investigation or any other investigation into corruption in public administration; and
 - (iii) to examine or test anything connected with the investigation or any other investigation into corruption in public administration, or cause or require it to be examined or tested; and
 - (iv) if the investigator or police officer reasonably suspects that a person who is or has been on or in the place or vehicle has on or about his or her body evidence of a prescribed offence, to search the person; and
 - (v) to seize and retain anything that the investigator or police officer reasonably suspects has been used in, or may constitute evidence of, a prescribed offence, or issue a retention order in respect of such a thing requiring that it not be removed or interfered with without the approval of an investigator; and
 - (vi) to seize and retain anything that the investigator or police officer reasonably suspects has been used in, or may constitute evidence of, an offence other than a prescribed offence, or issue a retention order in respect of such a thing requiring that it not be removed or interfered with without the approval of an investigator, if the investigator reasonably believes that it is necessary to do so in order to prevent its concealment, loss, mutilation or destruction or its use in committing such an offence.

A copy of the warrant will be provided to you.

Powers under the warrant

In executing the warrant, the investigator or police officer may be assisted by such persons as the investigator or police officer considers necessary in the circumstances. An investigator or police officer may require an occupier of a place or a person apparently in charge of a document or thing to give to an

investigator or police officer, or a person assisting an investigator or police officer, such assistance as is reasonably required by the investigator or police officer for the effective execution of a warrant: (see 31(9)).

In searching a person under this section, the investigator or police officer—

- (a) may run his or her hands over the person's outer clothing; and
- (b) may require the person to remove a coat, jacket, hat or shoes the person is wearing, and may run his or her hands over the person's remaining outer clothing; and
- (c) if the investigator or police officer sees or detects any thing that he or she reasonably suspects is, or contains, evidence of a prescribed offence, may require the person to surrender that item for inspection; and
- (d) may use reasonable force to remove an item from a person if the person does not comply with a requirement to remove or surrender the item under paragraph (b) or (c); and
- (e) may inspect an item that a person has removed or surrendered, or that has been removed from a person; and
- (f) must conduct the search in a manner that affords, to the extent that the circumstances of the search permit, reasonable privacy to the person being searched; and
- (g) must conduct the search as quickly as is reasonably practicable in the circumstances of the search.

A search must be conducted by a person of the same sex as the person being searched unless it is not reasonable or practicable to do so in the circumstances of the search.

Privilege

A document properly the subject of privilege (including legal professional privilege) cannot be seized under the warrant.

A person is entitled to make a claim of privilege over any document or thing an investigator or police officer intends to inspect, copy or seize under the warrant.

If a claim of privilege is made the person making the claim will be required to seal the document or thing in an envelope (or otherwise secure the document or thing) and it will be given to the proper officer of the Supreme Court.

The claim will then be dealt with in accordance with sch 3 of the Act.

If you would like to seek legal advice in relation to the making of a claim of privilege the investigator or police officer named in the warrant will give you a reasonable opportunity to do so.

Offence provisions

TAKE NOTICE that section 33 of the Act relevantly provides:

- 1) A person must not—
 - (a) refuse or fail to provide a statement of information as required by the person heading an investigation; or

- (b) include information in a statement of information knowing that it is false or misleading in a material particular; or
- (c) without lawful excuse, refuse or fail to comply with a requirement or direction of an investigator under this Act; or
- (d) alter, destroy, conceal or fabricate a document or other thing knowing that it is or is likely to be required by an investigator performing functions under this Act; or
- (e) otherwise hinder or obstruct an investigator, or a person assisting an investigator, in the performance of his or her functions.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- 2) An investigator may arrest a person without warrant if the investigator reasonably suspects that the person has committed, is committing, or is about to commit, an offence against subsection (1) and—
 - (a) when required to do so by an investigator the person failed to state truthfully his or her personal details or to produce true evidence of those details; or
 - (b) the investigator has reasonable grounds for believing that the person would, if not arrested—
 - (i) fail to attend court in answer to a summons issued in respect of the offence; or
 - (ii) continue the offence or repeat the offence; or
 - (iii) alter, destroy, conceal or fabricate evidence relating to the offence; or
 - (iv) intimidate, harass, threaten or interfere with a person who may provide or produce evidence of the offence.
- 3) On arresting a person under this section, the investigator must immediately deliver the person, or cause the person to be delivered, into the custody of a police officer (and the person will, for the purposes of any other law, then be taken to have been apprehended by the police officer without warrant).