

STANDARD OPERATING PROCEDURE 5 ARREST

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PURPOSE

The purpose of this Standard Operating Procedure (SOP) is to provide direction to investigators when exercising a power of arrest for the offence of obstruction under section 33(2) of the *Independent Commissioner Against Corruption Act 2012* (the ICAC Act) and provide appropriate information about the rights, obligations and liabilities of persons in relation to whom powers under that section are exercised.

SCOPE

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

PROCEDURE

The power of arrest for obstruction given under section 33(2) of the ICAC Act may be exercised where the investigator reasonably suspects that a person has committed, is committing, or is about to commit an offence against section 33(1) of the ICAC Act (e.g. refusing or failing to provide a statement of information), and when that person, having been required to do so by an investigator, failed to state truthfully his or her personal details or produce true evidence of those details or the investigator has reasonable grounds for believing one of the matters set out in section 33(2)(b), i.e. that the person would, if not arrested -

- (i) fail to attend court in answer to a summons,
- (ii) continue the offence or repeat the offence,
- (iii) alter, destroy, conceal or fabricate evidence relating to the offence,
- (iv) intimidate, harass, threaten or interfere with a person who may provide or produce evidence of the offence.

Before arresting a person in accordance with section 33(2), the investigator ought to advise the person of the conduct in which the person has engaged that amounts to 'obstruction' and warn him or her of the consequences of continuing that conduct.

The following procedures will apply whenever the power of arrest is exercised.

If reasonably practicable to do so, the arrested person must be immediately delivered into the custody of a SAPOL seconded ICAC investigator.

The SAPOL seconded ICAC investigator will immediately convey the arrested person to the nearest custodial police station. The arrested person will be processed according to SAPOL procedures.

If a SAPOL seconded ICAC investigator is not readily available then 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).

Where an investigator arrests a person in accordance with section 33(2) of the ICAC Act, the investigator must ensure that the Director for Public Prosecutions is advised as soon as reasonably practicable.

RIGHTS

All arrested persons are to be afforded the rights that apply to apprehended persons pursuant to section 79A of the *Summary Offences Act 1953*.

INTERVIEW

In interviewing an arrested person, the investigator must comply with the obligations and procedures contained in section 74D of the *Summary Offences Act 1953*.

REFERENCES

Independent Commissioner Against Corruption Act 2012

Summary Offences Act 1953

SOP 3 Enter and search warrants

DOCUMENT HISTORY

DATE	ACTION	PREPARED BY
04 Jul 2013	SOP created	Director Operations
28 Jul 2014	SOP reviewed	Director Operations
05 Nov 2015	SOP reviewed and Amended	Director Operations
31 Oct 2016	SOP reviewed and amended	Director Investigations
11 Aug 2017	SOP reviewed and amended	Director Investigations
20 Mar 2018	SOP name reviewed and amended	Director Investigations
09 Jun 2020	SOP reviewed and amended	Director Investigations
16 March 2021	SOP reviewed and amended	Director Investigations
29 April 2021	SOP reviewed and amended	Director Investigations