

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 an enter and search warrant issued under section 31 of the *Independent Commissioner Against Corruption Act 2012* (ICAC Act) and 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 seconded or appointed under section 14 of the ICAC Act.

WARRANT

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

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

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

ENTER AND SEARCH WARRANTS

INVESTIGATOR'S RESPONSIBILITIES

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

- Unless it is not reasonably practicable to do so, record the execution of the warrant by means of a video recorder.
- Unless it is not reasonably practicable to do so, produce the original warrant for sighting by the person it is being executed upon without relinquishing physical possession of the original warrant.
- Unless it is not reasonably practicable to do so, provide a copy of the warrant (which is clearly marked as a copy) to the owner or occupier of the place or vehicle to which the warrant relates.
- Provide the person in relation to whom entry and search powers are to be exercised under the authority of the warrant the information sheet detailing their rights, obligations and liabilities in regard to the warrant (refer Appendix A).
- Comply with all conditions that may be stipulated on the warrant.
- Where the warrant has been obtained by telephone in urgent circumstances, the original warrant, once obtained, must be produced for sighting to the owner or occupier of the place or vehicle to which the warrant relates as soon as reasonably practicable.

- Only exercise the power to break 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).
- Only conduct a search of a person of the same sex as the investigator unless it is not reasonable or practicable to do so in the circumstances of the search.
- 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 upon request (refer to **'Requirements'** below).

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) and (10) of the ICAC Act it is recommended that the direction is given in the following terms:

"Pursuant to section 31 of the Independent Commissioner 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 Commissioner 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

APPENDIX A – INFORMATION SHEET

Information about this warrant

What is this document?

This is a warrant issued pursuant to section 31 of the Independent Commissioner 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.

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.

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).