



SAFEWORK SA

SEARCH WARRANTS

SOP/000

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DOCUMENT CONTROL SHEET

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A/Executive Director
SafeWork SA

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1. PURPOSE

This procedure provides guidance to inspectors when applying for and executing a search warrant pursuant to sections 167, 168 and 169 of the WHS Act.

2. DEFINITIONS

IRC	Means Industrial Relations Court
Line Manager	Means your team manager
PCBU	Means person conducting a business or undertaking as described in the Work Health & Safety Act 2011
Regulator	Means Executive Director of SafeWork SA or their delegate
WHS Act	Means Work Health & Safety Act 2011

3. POLICY SECTION

3.1. Legislative provisions and their interpretation by the regulator

In addition to the general powers of entry that an inspector has under sections 163 and 165, an inspector may apply for a search warrant.

It is the policy position of the regulator that search warrants will only be used in exceptional circumstances. Exceptional circumstances would exist where the general powers of entry in s163 and 165 are not adequate or appropriate and there is a critical need to search for evidence of a suspected serious breach of WHS legislation.

A warrant may include the power of arrest.

An application for a search warrant that includes the power of arrest must be executed with the support of the police and the police shall effect the arrest

If the power to arrest is not required, the application should clearly state that the arrest provisions are not sought and the warrant should exclude any reference to the power of arrest.

3.2. Applying for a search warrant

Pursuant to s. 167 of the WHS Act an inspector may apply to a magistrate for a search warrant for a *place*.

Place is defined in s. 8 of the WHS Act:

8 (1) *a workplace is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.*

(2) *Place includes -*

- (a) vehicle, vessel, aircraft or other mobile structure; and*
- (b) any waters and any installation on land, on the bed of any waters or floating on any waters.*

s167 requires that the application for a search warrant *must be sworn and state the grounds on which the warrant is sought.*

s167(4) states that the Magistrate may issue a search warrant only if they are satisfied that there are **reasonable grounds for suspecting**:

- that there is a particular **thing** or **activity** (the *evidence*) that may provide evidence of an offence against the WHS Act and
- the evidence is, or may be within the next 72 hours, at the place.

For example: An activity may be the illegal removal of asbestos from a commercial or residential property after business hours or on a week-end or public holiday. The thing to be seized may be a sample of the material being removed which is the evidence that may provide evidence of an offence against the WHS Act – ‘Illegal removal of asbestos’.

“Reasonable grounds for suspecting” or a reasonable suspicion that an offence against the WHS Act is or has been committed has a particular meaning in legal terms. The following definition may assist in determining what is a “reasonable suspicion”.

“A suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to ‘a slight opinion, but without sufficient evidence’.

- Kitto J in *Queensland Bacon Pty Ltd v Rees* (1966) 115CLR 266
- Endorsed in *George v Rockett* (1990) 170 CLR 104

For further information on ‘reasonable belief’, refer to Appendix 1 of MOP SAFE 11/0842 General guidelines when issuing notices.

3.3. Grounds for a search warrant

In stating the reasonable grounds on which the warrant is sought, the inspector should provide in their affidavit or sworn application the following information:

- the grounds upon which the inspector has formed a suspicion that an offence is being, has or is likely to be committed
- the background on the nature of the alleged offences being investigated
- details of evidence gathered to date that support the suspicion or allegation that an offence is being, has or is likely to be committed
- the basis on which the belief has been formed that the documents or things being sought which are material to the investigation are held or suspected of being held at the place described in the application
- an explanation of why the general powers or coercive powers afforded by sections 163 and 165 are not adequate for entry to the place, and
- any immediate risks to health and safety that the search warrant is intended to or aimed at addressing.

A magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

3.4. Use of necessary and reasonable force

The use of “necessary and reasonable force” to enter the place and exercise the inspector’s powers may include the use of physical force. If it is anticipated that force of any kind will be necessary the regulator should consider providing assistance to the inspector.

Section 166 allows an inspector to use the assistance of a person (the assistant) if the inspector considers that the assistance is necessary.

The assistant may do such things at the place and in such manner as the inspector reasonably requires to exercise their compliance powers but must not do anything that the inspector does not have the power to do, except as permitted under a search warrant.

Anything done lawfully by the assistant is taken for all purposes to have been done by the inspector.

The inspector may consider it necessary to seek the assistance of a police officer to use the required force to enter the place.

Force may include the use of physical force to gain entry and assistance may be required from specialists or a security firm or a person properly trained and equipped to affect the entry to the place in a safe manner and with minimal damage to property.

The use of force may include restraining a person who endeavours to frustrate or deny entry to the place. In such circumstances the inspector should seek the assistance of the police. Under no circumstances should an inspector use or attempt to use physical force or to restrain a person when executing a warrant.

The entry must be planned and carried out in such a manner as will reduce the likelihood of any risks to the health and safety of the inspector and their assistants. This is particularly important in circumstances where resistance to the entry or conflict during execution of the search warrant is anticipated or likely to occur.

3.5. Announcement before entry on warrant

Section 168(1) of the WHS Act requires the inspector named in the warrant to announce that he or she is authorised by the warrant to enter the place, and give any person at the place an opportunity to allow that entry.

Section 168(2) provides that the 168(1) announcement is not required if the inspector believes on reasonable grounds that immediate entry to the place is needed to ensure safety of any person or that the effective execution of the warrant is not frustrated.

3.6. A copy of warrant must be given to the person with management or control of the place

Section 169(a) of the WHS Act requires the inspector or assistant executing the warrant to identify themselves, to the person who has or appears to have management or control of the place, by producing their identity card for inspection.

WHS Regulators have determined that the preferred and usual method of identification is your inspector identity card. (Because s157(2) of the WHS Act requires that inspectors produce their identity card upon request when they exercise compliance powers, it is expected that inspectors will carry their identity card with them at all times when likely to exercise their powers.) Refer to: [Policy for Inspector functions, powers and obligations – Guidance Part 2.](#)

Section 169(b) requires the inspector to give a copy of the warrant to the person who has or appears to have management or control of the place.

Do not give the original warrant to the person who has or appears to have management or control of the place.

3.7. Execution of the search warrant & search

Execution of a search warrant and the subsequent search will be conducted on video recorder(s) with sound. The recorded video/audio will be managed as per the following procedures:

- SOP WKP 05/0127 Digital Evidence Management, and
- SOP SWSA 06/0454 Evidence Management.

3.8. Limitation on entry powers

Section 170 places a limitation on the powers of entry of an inspector.

An inspector may not enter any part of a place that is used only for residential purposes except:

- *with the consent of the person with management or control of the place; or*
- *under the authority conferred by a search warrant; or*
- *for the sole purpose of gaining access to a suspected workplace, but only:*
- *if the inspector reasonably believes that no reasonable alternative access is available; and*
- *at a reasonable time having regard to the times at which the inspector believes work is being carried out at the place to which access is sought.*

3.9. Urgent search warrants

Section 167(6) provides that an inspector may apply to a magistrate for a search warrant by telephone, fax or other prescribed means if the inspector considers the urgency of the situation requires it and, in such a case, the following provisions will apply:

- (a) the magistrate may complete and sign the warrant without the provision of sworn evidence and without a written application that states the grounds on which the warrant is sought if the magistrate is satisfied that there are reasonable grounds for issuing the warrant urgently;
- (b) if the magistrate completes and signs a warrant under paragraph (a), the magistrate must then tell the inspector:
 - (i) the terms of the warrant (as contemplated by subsection (5)0; and
 - (ii) the date on which, and the time at which, the warrant was signed;

If steps are taken under paragraph (b), the inspector must then complete a form of warrant in the same terms as the warrant signed by the magistrate and write on the form:

- the name of the magistrate; and
- the date on which, and the time at which, the warrant was signed; and
- send the magistrate the completed form of warrant not later than the day after the warrant is executed or comes to an end;

A form of warrant completed by an inspector under paragraph (c) has the same force and effect as a warrant issued by the magistrate under subsections (4) and (5).

3.10. SA Jurisdictional Note

Experience in other regulatory agencies in South Australia has evidenced legal challenges to a search warrant that lists other inspectors as assistant(s). Case Law has determined an assistant is a person who is not an inspector by definition. Therefore, each inspector participating in a search will have their own warrant in their own name. All assistant's names can be listed on each inspector's warrant. This action aims to reduce the risk of any future legal challenges surrounding attendees at a search under a warrant.

4. PROCEDURE SECTION

Responsibility	Description
Inspector	<p>Reasons for a search warrant</p> <p>Determine whether there is a need for a search warrant and discuss with your line manager in the first instance. A search warrant should be considered only when the alleged breach of legislation is serious and the general powers of entry are not adequate or not appropriate, e.g.</p> <ul style="list-style-type: none"> • when the place to be searched is not a workplace, or • when there is a reasonable suspicion that the evidence being sought is likely to be destroyed or concealed, or • when you have a reasonable suspicion that an unlawful activity is likely to take place and that the activity may create an immediate risk to health and safety. <p>If a search warrant is considered necessary; seek an urgent legal case conference</p>
Legal Case Conference Team / Line Manager	<p>If the legal case conference agrees a search warrant is necessary, the respective team manager will advise the relevant Director of that decision, and obtain final approval to obtain the warrant.</p>

<p>Inspector / Line Manager</p>	<p>Prepare the search warrant</p> <p>Prepare the application for a search warrant taking into account the requirements of s167. The application must be sworn (or in the form of an affidavit) and clearly state the grounds on which the warrant is sought.</p> <p>The application must detail, among other things:</p> <ul style="list-style-type: none"> • the particular thing or activity (the evidence) that the search is intended to find and that this thing or activity may provide evidence of an offence against the WHS Act, and • that the evidence is or may be at the place where the warrant will be executed within 72 hours from the date and time of the Magistrates signature on the Warrant <p>State whether the search warrant should include the power of arrest. If the power of arrest is being sought, liaise with the police and seek to have the police included in the warrant.</p> <p>List all the assistant's names on the search warrant.</p>
<p>Legal Team</p>	<p>Assist the Line Manager & inspector with the application and warrant documents as necessary, and conduct final checks of the documents.</p>
<p>Inspector</p>	<p>Obtain judicial approval</p> <p>Non-urgent warrant: Alert a Registrar by telephone of the impending application (██████████). Scan the sworn application and email to ██████████, together with a MS Word version of the draft warrant. The magistrate will consider the application and either contact the inspector for further information or advise that the signed warrant is ready for collection. Warrants can be collected from the Court at Level 6, Riverside Centre, North Terrace.</p> <p>The Magistrates Court aims to process all Warrant applications within 24 hours.</p> <p>Regional Inspectors will need to prepare the Warrant and Application documents and arrange for a metropolitan based inspector to attend the Court on their behalf to collect warrants.</p> <p>Urgent warrant: Complete the warrant and warrant application as usual.</p> <p>Telephone the after-hours magistrate contact: ██████████, Registrar – ██████████ ██████████, Deputy Registrar – ██████████</p>
<p>Inspector & Line Manager</p>	<p>Risk assessment</p> <p>Identify and assess any risks to health and safety that are likely to arise during the execution of the warrant. If risks are identified determine the controls that will be put in place to eliminate or mitigate the risks.</p> <p>If the place is a workplace the risk assessment should include a workplace profile and, if relevant, any known history of the individuals at the workplace who are likely to hinder the execution of the warrant. If individuals are known to be hostile or if it is suspected that persons at the place may be hostile, the risk assessment should include a police check for any prior convictions.</p> <p>Request Police attendance to maintain the peace if the risk assessment deems it desirable. Police do not need to be listed on the warrant as assistants if they are attending for this purpose.</p>

<p>Inspector</p>	<p>Execution of the warrant</p> <p>Before executing a search warrant, you or a person assisting you must announce that you are authorised to enter the place by warrant and give any person at the place an opportunity to allow that entry.</p> <p>You may enter without announcement only if on reasonable grounds you believe that immediate entry is needed to ensure the safety of any person or that the effective execution of the warrant is not frustrated. For example, you may enter without announcement if you suspect on reasonable grounds that the evidence you are seeking may be easily destroyed if there is any undue delay in affecting entry to the place.</p> <p>Execution of the warrant must occur before the expiry date of the warrant. A warrant is valid for a maximum of 7 days from the time of Magistrates signature.</p> <p>A copy of the signed warrant must be made (the execution copy), and the execution copy will be provided to the person who has management and control or appears to have management and control of the place being searched.</p> <p>On entering the place you must:</p> <ul style="list-style-type: none"> • identify yourself by producing your identity card for inspection, and • at the first opportunity after entry to the place, give the person who has or appears to have management and control of the place a copy of the warrant <p>If the person in management and control of the place refuses to accept or sign the execution copy of the warrant, make a note of the name and a description of the person on whom you attempted to serve the execution copy and take it with you when you leave.</p> <p>Execution of a search warrant and the subsequent search will be conducted on video recorder(s) with sound.</p> <p>If there is no person at the place at the time of your attempted execution, the warrant should be enforced only in exceptional circumstances. As a general rule, a search warrant should not be affected if a place is unoccupied. Contact your line manager and discuss the next steps.</p> <p>If there is no person in management and control of the place and the execution copy cannot be served, the execution copy should be marked 'Unexecuted' attached to and filed with the search warrant in the relevant hard docket pending any request for it from the owner/occupier of the place.</p>
<p>Inspector</p>	<p>During the search</p> <p>Upon entry to the place, in addition to the legal requirements:</p> <ul style="list-style-type: none"> • explain the purpose of your search • remain calm and be considerate of persons in the place • use minimum force, if force is required, to effect entry (force may be applied to property only, not to persons) • cause as little damage as possible to property during the search • do not unduly restrict the movement of occupants unless they are hindering the search <p>Execution of a search warrant and the subsequent search will be conducted on video recorder(s) with sound.</p>

Inspector and/or Property officer	<p>Damage to property</p> <p>The execution copy of the search warrant must contain a description of any property damage caused by the entry and search. Either way, if there is damage to property or no damage, this must be included in the execution copy at the conclusion of the search and signed by you and the person on whom it was served, if they agree to sign.</p> <p>Any damage to property caused by you or your assistant should be photographed or recorded by video and form part of the records made of the search.</p>
Inspector & property officer	<p>Things seized during a search</p> <p>Anything seized must be handled in accordance with</p> <ul style="list-style-type: none"> • <i>SOP SWSA 06/0454 Seizure & Storage of Exhibit Property</i> • <i>MOP SAFE 11/0814 Forfeiture, return and access to seized things.</i>
Team Manager & Legal	<p>Via legal case conference will consider and endorse any decision to dispose of a thing upon being satisfied that:</p> <ul style="list-style-type: none"> • all steps to provide notice of forfeiture of the thing have been lawful and completed <ul style="list-style-type: none"> - Refer to MOP SAFE 11/0835 Powers of Seizure

5. FURTHER INFORMATION

- National WHS Compliance & Enforcement Policy
- Principles of Operation for the WHS Inspector
- All other related operational procedures are listed in the body of this document

6. REVIEW

This SOP must be reviewed 2 years after the last issue date and must be immediately modified if practices and/or procedures change.



SEARCH WARRANT
Magistrates Court of South Australia
www.courts.sa.gov.au
 Work Health and Safety Act 2012
 Section 167

Court Use
Date Filed:

Registry					File No		
Address	Street			Telephone		Facsimile	DX
	City/Town/Suburb		State	Postcode	Email Address		

Authorised Inspector

Name	Surname		Given name/s				
Address	Street			Telephone		Facsimile	
	City/Town/Suburb		State	Postcode	Email Address		

Details of Place

Address	Street					
	City/Town/Suburb			State	Postcode	

Terms of the Warrant

I, the undersigned magistrate,

upon the sworn application of the abovementioned inspector (s 167(2)),

upon the application of the abovementioned inspector by telephone, fax or other prescribed means where there are reasonable grounds for issuing the warrant urgently (s 167(6) – see note), namely:

am satisfied that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours at the place named above, a particular thing or activity that may provide evidence of an offence against this Act, namely:

I authorise that the above named inspector, with necessary and reasonable help and force to enter the above place and exercise the inspector’s compliance powers, in order to seize the following thing/s that may be evidence of an offence against this Act, namely:

Hours of the day or night when the place may be entered:

This search warrant ends on the following date and time:
 (not later than 7 days after the issue of the warrant)

..... Date and time warrant was signed MAGISTRATE
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NOTE

If a form of an urgent warrant is completed by an inspector under s 167(6)(c), it must be in the same terms as the warrant signed by the magistrate and the inspector must write the name of the magistrate in the space provided. A form of warrant completed by an inspector under s167(6)(c) has the same force and effect as a warrant issued by a magistrates.

A copy of the completed form of warrant must be provided to the issuing magistrate no later than the day after the warrant is executed or comes to an end.