



Australian Government
**Australian Commission for
Law Enforcement Integrity**

Volume 2	Investigation
Part 2	Search Warrants
Section 1	Search Warrants

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[REDACTED]

3.16 Section 105 of the LEIC Act

3.16.1 This section relates to the power to enter premises occupied by a law enforcement agency, without a warrant. Although this document relates to search warrants, it is appropriate to discuss this search provision here. This section permits an authorised officer to do the following:

- (a) enter any place occupied by a law enforcement agency at any reasonable time of the day; and
- (b) carry on the investigation of the corruption issue at that place; and
- (c) inspect any documents relevant to the investigation that are kept at that place; and
- (d) make copies of, or take extracts from, any documents so inspected; and
- (e) for the purpose of making a copy of, or taking an extract from, a document, remove the document from that place; and
- (f) seize things found at that place if the Integrity Commissioner (or the authorised officer) believes on reasonable grounds that:
 - (i) the thing is relevant to an indictable offence; and

- (ii) seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an indictable offence.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3.16.6 Additionally, consideration is necessary to determine the nature or extent of the document or thing which it is intended to be obtained under the authority of this section. Unlike notices to produce⁷, summonses⁸ or ACLEI's search warrant provisions,⁹ a custodian of the document or thing is permitted to resist any attempt by ACLEI access on the following grounds:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- (iii) legal professional privilege;¹¹ [REDACTED]
- [REDACTED]

[REDACTED]

¹¹ This privilege is not abrogated by the LEIC Act search warrant provisions and only relates to legal advice between government organisations, government officials or the Minister for Home Affairs



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Volume 2	Operations
Part 1	Administration
Section 5	Exhibit & Evidence Management

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. LEGAL PROFESSIONAL PRIVILEGE [REDACTED]

- 7.1. Legal professional privilege exists to protect two kinds of material:
- (a) confidential communications made for the purposes of seeking or being provided with legal advice; and
 - (b) communications made for the purpose of existing or reasonably contemplated judicial or quasi-judicial proceedings.

Parliament and the courts attach a high value to the public interest in allowing people to seek and receive frank guidance from legal advisers.

- 7.2. Legal professional privilege is held by the client and may be waived by the client, either expressly or implicitly. Section 138 of the LEIC Act provides that the search warrant provisions in the Act do not affect the law relating to legal professional privilege. There are express provisions protecting privileged information held by a lawyer issued with a notice (s 79 of the LEIC Act) but this does not apply to privilege that may be claimed by a Commonwealth entity (s 80(5)(c)). Similar provisions apply for summonses.
- 7.3. When documents are sought or seized, it is important that the occupier or person be given an opportunity to claim legal professional privilege. In general terms, where such a claim is made:
- (a) if it seems obviously soundly based, the case officer should not seize the items;
 - (b) the items likely to be subject to a claim should be placed in a container and it is sealed with the ACLEI officer and the occupier to sign;
 - (c) the case officer should inform the Principal Lawyer and seeks guidance; and



(d) the container should not be opened or its contents examined by ACLEI unless and until the person has agreed to waive any privilege that may exist or a court has decided that legal professional privilege does not apply.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]