



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

# **STANDARD OPERATING PROCEDURE**

## **SEARCH WARRANTS**

Version 2

**OFFICIAL**



## SEARCH WARRANTS

### Relevant Legislation

*Law Enforcement Integrity Commissioner Act 2006 (Cth) (LEIC Act)*

Part 9 Division 4 – Search Warrants

*Crimes Act 1914 (Cth) (Crimes Act)*

Part 1AA Divisions 1 and 2 – Search Warrants

Part 1C – Investigation of Commonwealth Offences

### Links

The following Practice Notes and Guidelines may also assist:

Section 122 LEIC Act: Use of Equipment to Examine or Process Things	13#1731DOC
Section 125 LEIC Act: Order to Assist with Computer	13#1732DOC
Claims for Public Interest Immunity	13#1737DOC
Claims for Legal Professional Privilege: warrant on non-legal premises	13#1736DOC
Claims for Legal Professional Privilege: search of a person	13#1735DOC

### Previous Versions

Version 1: CM 17#4288DOC - 28 March 2018

### Approval

This Standard Operating Procedure is approved.

Jaala Hinchcliffe  
Integrity Commissioner

9 September 2021



## Templates

No.	Templates	CM Reference
	<b>LEIC Act</b>	
1.	Application –Person Search	21#15548DOC
2.	Application –Premises Search	21#15547DOC
3.	Affidavit – Offence Warrant – Premises / Person	21#15546DOC
4.	Affidavit – Investigation Warrant – Premises / Person	21#15545DOC
5.	Offence Warrant – Person Search	21#15544DOC
6.	Offence Warrant – Premises Search	21#15543DOC
7.	Investigation Warrant – Person Search	21#15542DOC
8.	Investigation Warrant – Premises Search	21#15541DOC
9.	Application – s.125 assistance	21#15540DOC
10.	Affidavit – s.125 assistance	21#15539DOC
11.	Order – s.125 assistance	21#15538DOC
12.	Application – s.122 time extension	21#15537DOC
13.	Affidavit – s.122 time extension	21#15536DOC
14.	Notice to occupier – s.122 time extension	21#15535DOC
15.	Order – s.122 time extension	21#15534DOC
16.	Notice to occupier – s.126 data accessed on other premises	21#15533DOC
	<b>3E Crimes Act</b>	
17.	Application – Search Warrant – Single premises	21#15561DOC
18.	Application – Search Warrant – Single person	21#15560DOC
19.	Affidavit – Search Warrant – Person/s only	21#15559DOC



20.	Affidavit – Search Warrant – Single premises or conveyance	21#15558DOC
21.	Affidavit – Search Warrant – Multiple premises	21#15557DOC
22.	Affidavit – Search Warrant – Premises and Person/s	21#15556DOC
23.	Affidavit Annexure – ACT jurisdiction only	21#15555DOC
24.	Search Warrant – Person	21#15554DOC
25.	Search Warrant – Premises or Conveyance	21#15553DOC
	<b>General Operational Documents</b>	
	Operation Order	21#17054DOC
	Operational Risk Assessment	21#17061DOC
	Rights of the Occupier – Crimes Act	21#16943DOC
	Rights of a Person searched – Crimes Act	21#16942DOC
	Occupants/ Persons Rights – LEIC Act	21#16944DOC
	Rights and Caution	21#16941DOC
	Assisting officer authorisation form	21#16937DOC
	AFP Search Warrant Guide and Script	21#16938DOC
	Search warrant roles and responsibilities table	21#16936DOC



## CONTENTS

<b>1</b>	<b>INTRODUCTION</b>	<b>6</b>
	Purpose and Background	6
	LEIC Act Search Warrants v Crimes Act Search Warrants	6
<b>2</b>	<b>LEIC ACT SEARCH WARRANTS</b>	<b>6</b>
	Types of LEIC Act Search Warrants	6
	Similarities between Offence and Investigation warrants	8
	Differences between Offence and Investigation warrants	8
	Which type of warrant should you be applying for?	8
<b>3</b>	<b>SECTION 3E CRIMES ACT WARRANTS</b>	<b>10</b>
<b>4</b>	<b>OBTAINING A LEIC ACT SEARCH WARRANT</b>	<b>10</b>
	Contents of a LEIC Act Search Warrant	11
	Adequately describing objects listed in the warrant	13
	Making the application to the issuing authority	14
	Telephone Warrants	15
<b>5</b>	<b>OPERATIONAL PLANNING</b>	<b>15</b>
<b>6</b>	<b>EXECUTING A LEIC ACT SEARCH WARRANT</b>	<b>18</b>
	Searching a premises under a search warrant	21
	Searching a person under a premises search warrant	22
	Ordinary or Frisk searching	22
	Handling seized property	23
	Continuity of seized items	23
	Use of Equipment	24
	Person Search warrants	25
	Use of Force and Assistance	25
	Offences	26
	Privilege and Immunity	26



## **1. INTRODUCTION**

### **Purpose and Background**

- 1.1 Part 9 Division 4 of the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act) provides ACLEI investigators with the legislative authority to apply for and obtain search warrants, and sets out the processes they must follow in executing a warrant.
- 1.2 To protect the rights of all parties including ACLEI, this Standard Operating Procedure (SOP) aims to ensure that search warrants are obtained in accordance with legislative requirements and that any material seized under those search warrants is admissible in later proceedings.

### **LEIC Act Search Warrants v Crimes Act Search Warrants**

- 1.3 ACLEI investigators may utilise the search warrant provisions of the LEIC Act or the *Crimes Act 1914* (Cth) (Crimes Act); however, the mechanism available under the Crimes Act for ACLEI investigators to obtain a Part IAA search warrant has some limitations.
- 1.4 For the purposes of Division 2 of Part IAA of the Crimes Act, an ‘executing officer’ must be a ‘constable’, which does not include ACLEI officers.<sup>1</sup> So, whilst ACLEI officers may apply for a warrant under Part IAA of the Crimes Act, they may not execute those warrants and will need to seek assistance from Federal, State or Territory police to do so – this can include AFP or State police officers seconded to ACLEI.

## **2. LEIC ACT SEARCH WARRANTS**

### **Types of LEIC Act Search Warrants<sup>2</sup>**

- 2.1 Section 109 of the LEIC Act provides for an authorised officer to apply for four different types of search warrants:
  - a) an investigation warrant to search a premises;
  - b) an offence warrant to search a premises;
  - c) an investigation warrant to search a person; and

---

<sup>1</sup> See section 3C of the Crimes Act

<sup>2</sup> Legal advice providing an explanation of each type of warrant is available at CM 21#15612DOC



- d) an offence warrant to search a person.
- 2.2 **Investigation warrant** – to search a premises or a person for a thing that may be relevant to a corruption investigation or a public inquiry.
- 2.3 An investigation warrant may be issued if:
- a) the issuing authority is satisfied that there are reasonable grounds for suspecting that there are, or will be within 72 hours, evidential material<sup>3</sup> on the premises or in possession of the person; **and**
  - b) there are reasonable grounds for believing that if a summons were issued for the production of the evidential material the material might be concealed, lost, mutilated or destroyed.
- 2.4 Evidential material is a thing that may be relevant to a corruption investigation or a public inquiry, or relevant to an offence against a law of the Commonwealth. A corruption investigation is an investigation into a corruption issue or an ACLEI corruption issue as defined in the LEIC Act.<sup>4</sup> A public inquiry is an inquiry conducted under Part 8 of the LEIC Act.<sup>5</sup>
- 2.5 Generally an investigation warrant is used in the early to mid-stages of an investigation, when the matter is still collecting evidence towards an offence.
- 2.6 **Offence warrant** – to search premises or a person for a thing relevant to an offence against a law of the Commonwealth.
- 2.7 An offence warrant may be issued if:
- a) the issuing authority is satisfied that there are reasonable grounds for suspecting that there is or will be, within 72 hours, evidential material on premises or in possession of a person.
- 2.8 Generally an offence warrant is used in the latter stages of an investigation, when the matter is coming to resolution and the investigator suspects an offence has been committed.

#### Similarities between offence and Investigation warrants

---

<sup>3</sup> Defined in s 5 of the LEIC Act, covering both investigation warrants and offence warrants

<sup>4</sup> Section 5 of the LEIC Act.

<sup>5</sup> Section 5 of the LEIC Act.



2.9 There are a number of similarities between Offence and Investigation warrants, including:

- a) an authorised officer may make an application to an issuing authority for a search warrant. An authorised officer is either the Integrity Commissioner or an ACLEI staff member authorised under section 140 LEIC Act;
- b) for premises related warrants, both warrants allow the ordinary search or frisk search of a person who is at or near the premises when the warrant is executed if there is reasonable grounds to suspect the person has evidential material in their possession;<sup>6</sup> and
- c) the authorised officer may obtain assistance from an assisting officer.<sup>7</sup>

#### **Differences between Offence and Investigation warrants**

2.10 There are a number of differences between Offence and Investigation warrants, including:

- a) the issuing authority for an investigation warrant is a Judge of the Federal Court of Australia or the Federal Circuit Court, or a Judge of a court of a State or Territory. The issuing authority for an offence warrant is a magistrate;<sup>8</sup> and
- b) an investigation warrant must give reasonable grounds for believing that if a summons were issued for the production of the evidential material the material might be concealed, lost, mutilated or destroyed. This is not a requirement for an offence warrant.

#### **Which type of warrant should you be applying for?**

2.11 The LEIC Act has been specifically drafted for the functions of ACLEI, and in instances where a search warrant is being sought by an ACLEI officer, a LEIC Act search warrant should be preferred, unless operational requirements dictate otherwise. In determining whether a LEIC Act investigation warrant or offence warrant is more appropriate, the specifics of the investigation should be considered in consultation with the relevant Director Operations.

---

<sup>6</sup> Section 110(3)(b) of the LEIC Act

<sup>7</sup> Section 5 definition of 'assisting officer' and section 117 of the LEIC Act

<sup>8</sup> Section 5 of the LEIC Act



2.12 If the investigation is quite advanced, and there is suspicion that the search will find evidential material relevant to a particular offence against the law of a Commonwealth, then an offence warrant is more appropriate. Alternatively, if the investigation is not advanced then an investigation warrant may be more appropriate, noting it has the additional threshold, being the requirement for the issuing authority to be satisfied there are reasonable grounds for believing that if a summons were issued for the production of the evidential material the material might be concealed, lost, mutilated or destroyed.

Type of Warrant	Circumstance where it should be used
<b>LEIC Act Offence warrant – Person / Premises</b>	<p>An offence warrant is used in the latter stages of an investigation, when the matter is coming to resolution and the investigator suspects an offence has been committed.</p> <p>Issuing officer is a Magistrate in the State the warrant will be executed (unless the issuing officer finds there are special circumstances exist which warrant it being issued in another State).</p>
<b>LEIC Act Investigation warrant – Person / Premises</b>	<p>An investigation warrant is used in the early to mid-stages of an investigation, when the matter is still collecting evidence towards an offence.</p> <p>Issuing officer is a Judge of the Federal Court of Australia or the Federal Circuit Court, or a Judge of a court of a State or Territory.</p> <p>An investigation warrant must give reasonable grounds for believing that if a summons were issued for the production of the evidential material the material might be concealed, lost, mutilated or destroyed.</p>
<b>3E Crimes Act warrant</b>	<p>3E Crimes Act warrants are only preferred if it is anticipated that assistance from the occupant under section 3LA of the Crimes Act will be required.</p> <p>While Section 125 of the LEIC Act specifies similar provisions, recent Legal advice recommends a preferred approach of a 3LA Order in conjunction with a 3E Crimes Act warrant, rather than a Section 125 order in conjunction with a LEIC Act warrant.</p>



### **3. SECTION 3E CRIMES ACT SEARCH WARRANTS**

- 3.1 There is no barrier to ACLEI staff members seeking a search warrant under the Crimes Act. Section 3D(2) of the Crimes Act states that even though another law of the Commonwealth provides the power to (amongst other things) search premises and persons, a similar power conferred by Part I of the Crimes Act may be used despite the existence of the power under the other law. Similarly, Section 137(2) of the LEIC Act is expressed in nearly identical terms. In other words, despite ACLEI officers being able to apply for LEIC Act search warrants, they may still apply for Crimes Act search warrants.
- 3.2 Part IAA of the Crimes Act establishes general provisions relating to the execution of search warrants. These provisions are substantially similar to the search warrant provisions contained in Division 4 of Part 9 of the LEIC Act; however the provisions of the Crimes Act do not make it a requirement to establish on reasonable grounds that if a summons was served, the material sought would be concealed, lost, mutilated or destroyed.
- 3.3 As has been noted above, only a 'constable' may execute a warrant issued under sections 3E and/or 3LA of the Crimes Act. If a Crimes Act warrant is to be applied for, the executing officer will likely be an AFP member seconded to ACLEI, and as such, existing AFP policies and procedures will be utilised.
- 3.4 When an application for a search warrant is being considered, the case officer and Director Operations must engage with ACLEI Legal at the earliest opportunity. ACLEI Legal should be given the opportunity to review all applications, if practicable to do so, prior to the application being made. If formal legal advice is required, the process for requesting the advice is available on the intranet.

### **4. OBTAINING A LEIC ACT SEARCH WARRANT**

- 4.1 Only an authorised officer may make an application to an issuing authority for a search warrant.<sup>9</sup> An authorised officer is either the Integrity Commissioner or an ACLEI staff member authorised under section 140 LEIC Act.<sup>10</sup>

---

<sup>9</sup> Section 108 of the LEIC Act

<sup>10</sup> For a current list of authorised officers, see the ACLEI Intranet



- 4.2 Following a discussion with Director Operations, and a decision being made as to the most appropriate warrant to apply for, the case officer is responsible for ensuring all the requisite paperwork for the warrant application is drafted. After the warrant and affidavit have been drafted and peer reviewed, the case officer will submit them to Director Operations for vetting.

#### Contents of a LEIC Act Search Warrant

- 4.3 The search warrant must contain the following:<sup>11</sup>
- a) **for an investigation warrant** – the corruption issues or public inquiry to which the warrant relates;
  - b) **for an offence warrant** – the offence to which the warrant relates;
  - c) name/description of the person or premises to which the warrant relates;
  - d) the kinds of evidential material to be searched for;
  - e) the name of the authorised officer responsible for executing the warrant;<sup>12</sup>
  - f) the time and date when the warrant is to expire, no later than midnight 7 days after date of issue;<sup>13</sup> and
  - g) whether the warrant can be executed at any time, or only during particular hours.
- 4.4 Warrants relating to a **premises** must also state that the warrant authorises the seizure of things other than evidential material found that the authorised officer or an assisting officer believes on reasonable grounds to be:<sup>14</sup>
- a) **for an investigation warrant** – evidential material relating to a corruption issue or public inquiry;
  - b) **for an offence warrant** – a thing relevant to the offence;

---

<sup>11</sup> Section 110 of the LEIC Act

<sup>12</sup> Note section 110(1)(d) of the LEIC Act, whereby the authorised officer can insert the name of another officer in the warrant.

<sup>13</sup> The example given in section 110(2) is as follows: 'If a warrant is issued at 3 pm on a Monday, then the expiry time specified in the warrant must not be later than midnight on Monday in the following week'.

<sup>14</sup> Section 110(3) of the LEIC Act



- c) evidential material (including evidence relating to property in respect of action under the *Proceeds of Crime Act 2002* (Cth), literary proceeds,<sup>15</sup> or benefits derived from the commission of an indictable offence)<sup>16</sup> **OR** tainted property (proceeds of an indictable offence, a foreign indictable offence, an indictable offence of Commonwealth concern or an instrument of an indictable offence);<sup>17</sup>
  - d) a thing relevant to an indictable offence;<sup>18</sup> and
  - e) If the authorised officer or assisting officer believes on reasonable grounds that seizure is necessary to prevent the concealment, loss or destruction of the thing or its use in committing an offence.
- 4.5 In addition to the powers of entry, search and seizure, a warrant in relation to **premises** also authorises the searching for and recording of any fingerprints found at the premises and the taking of samples of things found at the premises for forensic purposes.<sup>19</sup>
- 4.6 Warrants relating to a **premises** must also state whether the warrant authorises an ordinary or frisk search of a person at or near the premises, if, during the execution of the warrant, an authorised officer or assisting officer has reasonable grounds to believe that the person has in his or her possession:
- a) **for an investigation warrant** – evidential material relating to corruption issue of public inquiry;
  - b) **for an offence warrant** – a thing relevant to the offence;
  - c) evidential material (including evidence relating to property in respect of action under the *Proceeds of Crime Act 2002* (Cth), literary proceeds, or benefits derived from the commission of an indictable offence) **OR** tainted property (proceeds of an indictable offence, a foreign indictable offence, an indictable offence of Commonwealth concern or an instrument of an indictable offence);<sup>20</sup>

---

<sup>15</sup> Section 153 of the *Proceeds of Crimes Act 2002* (Cth)

<sup>16</sup> Section 338 of the *Proceeds of Crime Act 2002* (Cth)

<sup>17</sup> Section 338 of the *Proceeds of Crime Act 2002* (Cth)

<sup>18</sup> An 'indictable offence' is an offence that is generally more serious in nature, however exactly what does and does not fall into this category varies between jurisdictions. If unclear as to whether an offence is indictable, refer to the relevant legislation or consultACLEI legal.

<sup>19</sup> Section 112(b) of the LEIC Act

<sup>20</sup> Section 338 of the *Proceeds of Crime Act 2002* (Cth)



- d) a thing relevant to an indictable offence; or
- e) any eligible seizable item, being an item which would present a danger to a person, or could be used to assist a person to escape from lawful custody.<sup>21</sup>

4.7 Warrants relating to a **person** must also state:<sup>22</sup>

- a) the kind of search (frisk or ordinary) that the warrant authorises;
- b) that the warrant authorises the seizure of a thing other than evidential material found in the possession of the person, or in, or on an aircraft, vehicle or vessel, that the person had operated or occupied within the last 24 hours, if the executing officer or assisting officer believes on reasonable grounds that:
  - **for an investigation warrant** – there is evidential material relating to a corruption issue or public inquiry; or
  - **for an offence warrant** – a thing relevant to the offence; or
  - evidential material or tainted property within the meaning of the *Proceeds of Crime Act 2002* (Cth); or
  - a thing relevant to an indictable offence; or
  - any eligible seizable item; and
- c) if the authorised officer or assisting officer believes seizure is necessary to prevent its concealment, loss, destruction, or use in an offence.

**Adequately describing objects listed in the warrant**

- 4.8 In respect to ‘adequately describing objects listed in the warrant’ the High Court in *George v Rockett* [1990] HCA 26 stated that when the description of an object in a warrant is broad or not specific, the powers of seizure that the warrant confers will be wider, and as such it will be more difficult to persuade a Judge that there are reasonable grounds for belief that the object so described will, if found, afford evidence of the commission of the particular offence.

---

<sup>21</sup> Section 5(a) and (b) of the LEIC Act.

<sup>22</sup> Section 110(4) of the LEIC Act.



- 4.9 The LEIC Act requires that the kinds of evidential material to be searched for under the warrant are to be stated in the warrant by the issuing authority.<sup>23</sup> As such, it is important that items listed in the warrant are sufficiently specific to ensure that an issuing authority can be satisfied that there are reasonable grounds to believe that an object will afford commission of the offence/s listed.

#### **Making the application to the issuing authority**

- 4.10 It is the responsibility of the case officer to create a Search Warrants folder in CM within the overarching investigation container. The case officer must then create a case file divider within the Search Warrant folder for each search warrant applied for during the investigation. All paperwork relating to the warrants must be saved in the respective case file dividers.
- 4.11 While one affidavit can be used to support multiple warrants, a separate application and draft warrant must be completed for each warrant being applied for. A separate affidavit, application and authority must also be completed for any assistance orders being applied for under s 125 of the LEIC Act or s 3LA of the Crimes Act. Once all draft documentation is approved, the case officer will swear the affidavit as true and correct under oath or affirmation. This can be facilitated by a member of ACLEI legal.
- 4.12 Once the affidavit is sworn and the draft warrant paperwork is approved by Director Operations, the case officer will apply to have the search warrant authorised by an approved issuing authority. The appropriate issuing authority will depend on which warrant is being applied for. An appointment with the issuing authority will need to be made in advance – the Operational Support team are able to assist with making the required appointment.
- 4.13 Prior to attending the appointment, the search warrant paperwork should be endorsed with the next ACLEI search warrant record number. This number is issued by the Operational Support team. The case officer and corroborator will attend the appointment with the issuing authority, and take with them all the relevant paperwork.
- 4.14 Regardless of whether the warrant is granted or not, the case officer must scan a copy of the warrant paperwork and save it into the respective CM case file divider, before providing the original paperwork to the Operational Support Team.

---

<sup>23</sup> Section 110(1)(c) of the LEIC Act.



## **Telephone Warrants**

- 4.15 In urgent cases or where any delay would frustrate the effective execution of a warrant, an authorised officer may apply to an issuing authority for a search warrant by telephone, fax, email or other electronic means. A telephone warrant remains in force for a maximum of 48 hours.<sup>24</sup>
- 4.16 The authorised officer must complete a form of search warrant in terms corresponding substantially to those given by the issuing authority.<sup>25</sup> The form must identify the issuing authority and state the date and time the warrant was signed. The form, and corresponding affidavit containing a sworn version of the information upon which the warrant was granted, must be provided to the issuing authority no later than the day after the warrant expires, or the day after which it was executed, whichever is earlier.<sup>26</sup> The issuing authority is then to attach this material to the form he or she has completed.<sup>27</sup>
- 4.17 It is unlikely that an ACLEI investigation will require the use of a telephone warrant. If the case officer believes a telephone warrant is an appropriate investigative option, then this should be discussed with the relevant Director Operations and Executive Director Operations.

## **5. OPERATIONAL PLANNING**

- 5.1 In preparing to execute a search warrant, broader operational planning must occur, including the consideration of risks, resourcing and logistics. It is the responsibility of the case officer to ensure:
- a) all affidavit and warrant paperwork is completed and vetted as necessary;
  - b) an Operational Order has been completed (must be approved by Director Operations);
  - c) an Operational Risk Assessment has been completed (must be approved by Director Operations);
  - d) adequate resources are available to safely complete the warrant, including support from other agencies such as digital forensics and police technical team assistance;

---

<sup>24</sup> Section 111(4) of the LEIC Act.

<sup>25</sup> Section 111(7) of the LEIC Act.

<sup>26</sup> Section 111(8) and (9) of the LEIC Act.

<sup>27</sup> Section 111(10) of the LEIC Act.



- e) all required equipment, including search kits, forced entry kits, exhibit bags and Property Seizure Records (PSR) are available and conveyed to the search warrant location;
- f) all required approvals are obtained including, for travel, forced entry, expenditure and over time as necessary;
- g) pre-execution briefings are held to ensure all team members involved in the warrant (including assisting officers from other agencies) are aware of their roles and what is required of them;
- h) all post-warrant tasks and procedures are allocated and completed in a timely fashion; and
- i) ongoing communication and collaboration with partner agencies around exhibit management, handling and examination is maintained during and after the warrant execution phase.

5.2 It is important to understand the resourcing required to execute a search warrant, and the strain this can have on a small agency. As such, efficient and effective planning and execution is paramount to minimise the resourcing strain felt by the organisation. Generally a minimum of 6-8 staff members are required, to fill the roles of:

- a) **Team Leader** – in the case of ACLEI warrants, the team leader will be Director Operations, and does not necessarily need to travel to the warrant site.
- b) **Case Officer / Warrant Holder** – as detailed above.
- c) **Corroborating Officer** – responsible for recording all occupants / other persons at the premises, as well as other key events and times relating to the search.
- d) **Entry Officers** – responsible for ensuring the premises is safe and secure prior to the remaining team members entering. In cases of higher risk, these officers should be use-of-force trained police officers supporting the search warrant.
- e) **Custody Manager** – responsible for monitoring and managing all persons in the premises while the search warrant is being executed.



- f) **Video / Photographer** – responsible for photographing and recording the search process, including the entry (including any damage caused by the entry); a recorded walkthrough of the premises and any vehicles to be searched, prior to the search commencing; photographing all seized property in situ; video recording of the counting of any seized cash, jewellery or other valuables; video recording any conversations with the occupier/person of interest; and a recorded walkthrough of the premises at the conclusion of the search.
  - g) **Exhibits / Property Officer** – responsible for ensuring the necessary equipment and seizure kits are taken to the search; managing the overall search of the premises, including the allocation of searchers to specific rooms/areas; recording the start and finish times that specific areas are searched; and recording, securing and ensuring evidential continuity of exhibits.
  - h) **Search Officers** – with direction from the Property Officer and Case Officer, search officers are responsible for comprehensively and thoroughly searching the premises; identifying items for seizure and bringing them to the attention of the warrant holder; ensuring actions are taken to reduce the likelihood of cross-contamination; ensuring the item to be seized is photographed in situ before removal; conveying the seized item to property officer; and ensuring that the search officer's name, time and location where the seized property was found is recorded correctly.
  - i) **First Aid Officer** – responsible for carrying a first aid kit to the search warrant; ensuring the health and safety of all persons present during the execution of the warrant; and arranging medical treatment as necessary.
- 5.3 These roles are not exhaustive, and may need to be scaled up or down as necessary. There may also be occasion where use-of-force trained officers are required for officer safety, and in those cases, AFP or State Police assistance will be required. In addition, team members may be responsible for the completion of one or more tasks/roles depending on resource availability.
- 5.4 Regardless of the size or location of the search warrant, best practice is to always alert the local police station of the warrant activity during or immediately after entry to the premises has been gained, to ensure the local police are aware of the operational activity, and available to provide assistance if needed.



## **6. EXECUTING A LEIC ACT SEARCH WARRANT**

- 6.1 A search warrant allows an authorised officer and assisting officers to enter, search and seize items in accordance with the conditions of the warrant. A LEIC Act search warrant must be executed by an authorised officer, being an ACLEI staff member or an AFP member who is authorised under section 140 of the LEIC Act, and named in the warrant.<sup>28 & 29</sup>
- 6.2 The execution of all search warrants must be video recorded in their entirety. The video recording should commence prior to entry being obtained and the premises secured, and should not stop until the warrant is concluded and all staff have left the premises.
- 6.3 The video recording **must** include:
- a) date, time, staff identification and introductions (including members of other agencies) to the occupier;
  - b) identification of all other occupants and persons present;
  - c) an explanation by the case officer to the occupier of the reason for the search, the warrant/s being executed, the warrant conditions, the items being searched for and the Rights of the Occupier;
  - d) an offer to the occupier or person of interest to be present during the searching process;
  - e) a walk through of the premises prior to the search commencing;
  - f) the entire searching process;
  - g) any questioning of the occupier or person of interest relating to any in situ items located;
  - h) any located items of interest in situ prior to being moved/seized;
  - i) an explanation to the occupier of the PSR and any items being seized; and
  - j) a walk-through of the property prior to the conclusion of the search warrant and prior to staff departing the premises.

---

<sup>28</sup> Section 110(1)(d) of the LEIC Act.

<sup>29</sup> ACLEI authorised officers are not authorised under Part 1D of the Crimes Act to conduct any forensic procedure upon a person.



6.4 If the camera does stop due to insufficient battery or any other reason, then this should be explained, including the time and date of the stoppage, when the recording resumes.

6.5 When gaining entry to the premises, the case officer must:

- a) announce entry and give the occupier opportunity to allow entry;
  - o (if there is a belief on reasonable grounds that safety is an issue, or if effective execution may be frustrated, there is no requirement to announce entry or give time to the occupier. This will likely require the use of a locksmith or the use of force);<sup>30</sup>
- b) nominate a central point where all persons in the premises will be assembled;
- c) ensure this area has been thoroughly searched to ensure officer safety;
- d) appoint a custody manager to maintain supervision of person in the premises;
- e) identify himself or herself to the occupier using name, position and ACLEI identification badge, and briefly explain the reasons for law enforcement presence;<sup>31</sup>
- f) briefly explain to persons present the procedures for the search process;
- g) in the case of a search warrant for the premises, show and explain the warrant and the Rights of the Occupier documents to the occupier and ensure they understand them. Also make the warrant available to any other persons present at the premises to view if they wish to;
- h) show and explain a copy of the warrant to any person being searched under a premises warrant and ensure they understand it;
- i) in the case of a search warrant issued for a person, show and explain the warrant to the person named in the warrant and ensure they understand it;
- j) offer the occupier the opportunity to be present during the searching process;
- k) provide the occupier a copy of the PSR at the conclusion of the search; and
- l) advise Director Operations of the entry time and supply regular situation reports.

---

<sup>30</sup> Section 116 of the LEIC Act

<sup>31</sup> Section 119(3) of the LEIC Act



- 6.6 When **‘making a copy of the warrant available to the occupier’**, this should occur as soon as practicable after entry. A ‘copy of the warrant’ means an exact copy of the warrant and not a copy of a draft warrant or the contents of the warrant being provided orally to the occupier.
- 6.7 It is relevant to note that section 119 of the LEIC Act does not require that a copy of a warrant given to the occupier to include the signature of the issuing authority. Nonetheless, it is best practice for the copy given to the occupier to be a copy that is signed by the issuing authority.
- 6.8 The occupier or a person representing the occupier has a right to be present during the search and to observe the search, provided he or she does not impede it.<sup>32</sup> This entitlement is subject to Part IC of the Crimes Act (investigation of Commonwealth offences), which means that any conversations that occurs between the authorised officer and anyone present should comply with the provisions of Part IC and be recorded.
- 6.9 An authorised officer may take photographs or video recordings of the premises or things for **purposes incidental to the warrant**, or with the written consent of the occupier of the premises.<sup>33</sup> This provision is similar to section 3J of the Crimes Act, where ‘incidental to the execution of the warrant’ has been held to include recordings taken as a matter of practice.<sup>34</sup>
- 6.10 **Purposes incidental to the warrant** are generally to show continuity of evidence, that the warrant was conducted lawfully and / or to refute any allegations of misconduct. It does not include ‘intelligence purposes’, and documents located at a search warrant should not be photographed or their content copied ‘for intelligence purposes’. Any photographs, notes or other mediums used to capture information while executing a warrant are potentially disclosable. It is important to ensure you have met the requirements of the warrant when photographing or capturing content of material observed at a search warrant.
- 6.11 Photographs of evidential material can be taken as a form of seizure; however, items seized in this way must be added to the PSR. This type of seizure is akin to seizing the physical item and making a copy of it.

---

<sup>32</sup> Section 120 of the LEIC Act

<sup>33</sup> Section 121(1) of the LEIC Act

<sup>34</sup> See *R v Lao and Ngygen* [2002] 5 VR 129 at [41] – ‘in order to rebut any allegations that an improper search was made, or that items were not found at the premises, or that damage was caused by the search’.



### **Searching a premises under a search warrant**

- 6.12 Prior to searching a premises, the layout of the premises should be noted, and a co-ordinated plan should be established by the Property Officer to minimise duplication and ensure no areas are missed. The search of a premises should be conducted one room at a time, ensuring the search is thorough, methodical and documented. Notes should be taken to identify the person who searches each area, the time the search of an area commences and concludes, the time items are located, what the items are, who located the items and where they were located. These details should also be detailed on the video recording.
- 6.13 If an item of interest is located, it may be necessary to have a discussion with the case officer to determine whether the item fits within the scope of the warrant and whether it should be seized under the warrant. If the items is going to be seized, or is of relevance to the investigation, the occupier should be questioned under caution in relation to the item. This conversation must be video recorded. Following these questions, the item must then be video recorded and/or photographed in situ, before being taken to the exhibit/property officer to be documented and secured. The case officer must also consider the need for any fingerprint examination or other forensic examination that may be allowable under the warrant.
- 6.14 In addition to the items listed on the warrant, authorised officers have the power to seize things found at the premises which are not specified in the warrant, which are believed on reasonable grounds to be eligible seizable items.<sup>35</sup>
- 6.15 When conducting a search, searching officers should be aware of, and take all precautions to avoid exposure to illicit drugs, chemicals and contagious diseases. In addition, they must also take caution to avoid needle stick injuries. A double layer of protective disposable gloves must be worn by staff when conducting a search of a person/premise. Clean gloves are to be repeatedly replaced before, during and after individual searches/seizures, as appropriate, to avoid cross-contamination.
- 6.16 The LEIC Act allows for authorised officers and/or assisting officers to temporarily leave the premises for no longer than one hour or for a longer period with the consent of the occupier even though the warrant is still in force.<sup>36</sup>

---

<sup>35</sup> Sections 112(e) and 113(d) of the LEIC Act – see sections 5(a) and (b) for ‘eligible seizable items’.

<sup>36</sup> Section 121(2) of the LEIC Act



### **Searching a person under a premises search warrant**

- 6.17 Where a search warrant is executed at a premises, the people present may be searched by virtue of the warrant. This power may be exercised at the discretion of the Team Leader/case officer who will determine the extent of the search in accordance with the relevant legislation. Authority to search a person by virtue of a search warrant does not include a strip search or an internal body search. Where practicable, a person must only be searched by an officer of the same sex.
- 6.18 Protective gloves must be worn by searching officers when conducting a search of a person to ensure personal safety and to avoid cross contamination. Clean disposable gloves should be worn by searching officers over any protective gloves to avoid cross-contamination issues.
- 6.19 Searching officers must have regard to the location where the search of a person is to be conducted with safety in mind (for example, out of reach of items that can be used as weapons). Where the clothing a person is wearing is going to be searched, the person should be asked to remove the articles of clothing themselves in the first instance.
- 6.20 The property officer must record the time and location where each person was searched and the name of the authorised officer who searched the person. The person search must also be included on the video recording.

### **Ordinary and Frisk searching**

- 6.21 An Ordinary search means the search of a person or of articles in the possession of a person that may include requiring the person to remove the person's overcoat, coat, jacket or any gloves, shoes or hat and an examination of those items.<sup>37</sup>
- 6.22 A frisk search means a search of a person conducted by quickly running the hands over the person's outer garments and an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.<sup>38</sup>

---

<sup>37</sup> Section 5(a) and (b) of the LEIC Act.

<sup>38</sup> Section 3C of the *Crimes Act 1914* (Cth).



### **Handling seized property**

- 6.23 Prior to the execution of the search warrant, the Property Officer is required to obtain a Seizure Number from the ACLEI Exhibit Registrar or Assistant Exhibit Registrar. This number will be used in the reference of every item seized under that warrant. In addition, each item will be allocated an individual exhibit number.
- 6.24 Property seized, whether under a search warrant or not, must be handled in accordance with the Exhibit Handling SOP, which is available on the ACLEI Intranet page.
- 6.25 ACLEI members will not seize firearms, ammunition, explosives or illicit drugs. If these items are being searched for, local police or AFP should be involved in the execution of the search warrant. If these items are unexpectedly found as part of a search warrant, then local police or AFP should be called to attend and process these items. This also applies to any items unexpectedly located which relate to a State or other Commonwealth offence that is not relevant to the corruption investigation being conducted.
- 6.26 Evidentiary statements may need to be provided by the searching officer who found the items, in order to assist in any future criminal prosecution of charges related to those items.

### **Continuity of seized items**

- 6.27 Every item seized at the premises must be video recorded/photographed in situ before being handed to the property officer by the person who found it unless forensic or safety considerations dictate the property should remain in situ pending further examination. The property officer is responsible for ensuring the item's forensic integrity and evidential continuity is maintained.
- 6.28 The property officer must:
- a) record comprehensive particulars of the seized property on the PSR;
  - b) secure each item in a separate ACLEI exhibit bag, and label the bag appropriately with an exhibit label;
  - c) allocate a sequential item number to the property (this number must be recorded on both the exhibit label and the PSR);
  - d) retain possession of all seized property;
  - e) transport all seized property to an ACLEI premises or appropriate police facility ensuring that they remain secure at all times; and



- f) ensure custody of the items are transferred to an appropriate ACLEI exhibit officer or police exhibit manager.

### **Use of equipment**

- 6.29 An authorised officer is able to bring equipment to a premises to examine or process things found. There are certain conditions on this provision which are outlined in section 122 of the LEIC Act.
- 6.30 An authorised officer may also operate equipment on the premises to access data if there is a belief on reasonable grounds that the data might constitute evidential material and there will be no damage to the equipment. The data can also be copied to a disk or similar device and taken away. There are a number of conditions on this provision which are outlined in section 123 of the LEIC Act.
- 6.31 Expert assistance may also be sought to operate the equipment if necessary. There are a number of conditions on this provision which are outlined in section 124 of the LEIC Act. During an ACLEI search warrant, any expert assistance will be provided through support by police technical teams attached to the AFP or State police forces. ACLEI does not currently have in-house technical forensic capabilities.
- 6.32 An authorised officer may apply under s 125 of the LEIC Act to an issuing authority for an order requiring a specific person to assist in accessing, copying or converting data held in a computer. The issuing authority may grant an order if she/he reasonably suspects the person has relevant knowledge of the computer or related equipment and/or the person owns the equipment or is an employee of the owner. If an order is so made, it is an offence to fail to comply with the order. **Note:** ACLEI legal advice highlights possible issues with the use of an order under section 125 of the LEIC Act. If it is anticipated that assistance of this nature may be required, consideration should be given to applying for a warrant under section 3E of the Crimes Act and a corresponding assistance order under section 3LA of the Crimes Act.
- 6.33 Any items that are seized under a warrant must be recorded on the PSR, and a receipt copy be provided to the occupier or their representative.<sup>39</sup>

---

<sup>39</sup> Section 129 of the LEIC Act



### **Person Search Warrants**

- 6.34 Search warrants in relation to a **person** authorise the authorised officer or assisting officer to search the person specified in the warrant and things found in possession of the person. It also authorises the recording of fingerprints from things and the taking of forensic samples from things found in the course of the search. In addition, the warrant authorises the search of any aircraft, vehicle or vessel that the person had operated or occupied at any time within the last 24 hours before the search began, for things specified in the warrant.<sup>40</sup>
- 6.35 When a search warrant in relation to a **person** is executed, the authorised officer must identify herself or himself to the person and make a copy of the warrant available to that person.<sup>41</sup>
- 6.36 An ordinary search or a frisk search (depending on the warrant conditions) must, if practicable, be carried out by a person of the same gender as the person being searched.<sup>42</sup>
- 6.37 The execution of the search warrant must be video recorded, including staff identification and introductions, the provision and explanation of the warrant to the person of interest, the searching process, and any questioning of the person in relation to any items of interest located, the seizure of any items and the explanation of the PSR to the person of interest.

### **Use of Force and Assistance**

- 6.38 An authorised officer may seek assistance to conduct the execution of a search warrant. If the officer assisting is from another agency and is not also an authorised officer or a constable, then the assisting officer authorisation form must be completed.
- 6.39 An authorised officer executing a warrant and an assisting officer may use force against persons and things that is reasonable in the circumstances.<sup>43&44</sup> Only an authorised officer or a constable may take part in searching a person, which must not be a strip search or a body cavity search.<sup>45</sup>

---

<sup>40</sup> Section 113 of the LEIC Act

<sup>41</sup> Section 130 of the LEIC Act

<sup>42</sup> Section 131 of the LEIC Act

<sup>43</sup> Section 117 of the LEIC Act

<sup>44</sup> If the Assisting Officer is not an authorised officer or a constable, they may only use force as reasonable and necessary, against thing, not people.

<sup>45</sup> Sections 114 and 117 of the LEIC Act



## **Offences**

6.40 The LEIC Act creates offences for making and providing false and incorrect information in applying for a search warrant. There are also offences for using search warrants that have not been appropriately approved or depart in a material particular from the terms authorised by the issuing authority.<sup>46</sup>

## **Privilege and Immunity**

6.41 As a general rule, the laws relating to legal professional privilege are not affected by the search warrant provisions of the LEIC Act.<sup>47</sup>

6.42 The CDPP Search Warrant Manual contains comprehensive guidelines in relation to legal professional privilege; however as of May 2021 the CDPP have ceased updating their Search Warrant Manual. The material may still be relevant, but should be confirmed as contemporaneous best practice prior to adoption.

6.43 If the premises being searched is either the business or personal premises of a legal professional, advice should be sought from Director Operations and ACLEI Legal prior to applying for or executing the search warrant.

---

<sup>46</sup> Sections 132 to 136 LEIC Act

<sup>47</sup> Section 138 LEIC Act