



AFP
AUSTRALIAN FEDERAL POLICE

ISP-S-1

AFP Investigation Practice Standard

Search Warrant

THIS DOCUMENTS HAS BEEN DE-CLASSIFIED AND
PUBLISHED PURSUANT TO THE

FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)

INFORMATION PUBLICATION SCHEME (IPS)

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FOREWORD:

This standard has been developed by the Investigation Standards and Practices portfolio, drawing on the experience of a diverse group of Detectives. This instrument is supported by the Commissioner as the AFP standard for search warrants.

The purpose of this standard is to describe and define the requirements for the use of a search warrant within the context of an investigation, establishing national consistency in practices. This standard provides the essential components of the search warrant process which either **must** or **should** be undertaken.

If a component **must** be undertaken, the activity is required by legislation, governance or best practice supported by case law. Deviation from this is a critical decision that needs to be fully examined, explained and recorded.

If a component **should** be undertaken, the activity is regarded as the recommended course of practice. Deviation from this is a decision and should be recorded.

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INTRODUCTION:

A search warrant is an instrument authorising police to enter a premises or detain a person to search for and obtain evidential material. It specifies and allows conduct that may otherwise be unlawful, and is used when it is the most appropriate investigative activity for obtaining evidential material.

The intent of a search warrant is as a tool for gathering evidence for prosecution or court outcome. A consequence of executing a search warrant may be the disruption or prevention of criminal activity.

A highly developed understanding of the purpose and scope of search warrants is required as it is applied to complex and ambiguous operating environments. From this understanding comes flexibility in applying the powers inherent in search warrants.

SCOPE:

This standard provides requirements for the rationale of a search warrant in an investigative context.

It is intended for members undertaking search warrant activities in the context of a criminal, civil or inquest investigation and applies to all search warrants including those commonly sought under: *Crimes Act 1914*; *Crimes Act 1900*; *Proceeds of Crime Act 2002*; *Drugs of Dependence Act 1989* and *Coroners Act 1997*.

The search warrant process extends beyond writing and execution. The phases of evaluation, preparation, execution and post execution are described in the following standard.

DEFINITIONS:

Must	An activity that is required by legislation or governance or best practice supported by case law. Deviation from this is a critical decision that needs to be fully examined, explained and recorded.
Should	An activity that is regarded as the recommended course of practice. Deviation from the standard is a decision and should be recorded.
Member	An AFP appointee or any other person providing assistance to the investigation
Evidential material	Material able to be obtained by a search warrant that may provide evidence relating to an offence or matter under investigation.

Warrant holder	Person authorised to execute the search warrant as described in the relevant legislation.
Field debrief	An informal process conducted as soon as practicable after the execution of a warrant in a convenient location.
Execution Plan	All planning, including a tactical plan, which relates to the execution of a warrant.

UNDERPINNING PRINCIPLES:

Risk

Risk is present in all phases of the search warrant process and must be addressed throughout the process.

The AFP has an endorsed [Risk Framework](#). This framework must be utilised in the assessment and treatment of risk.

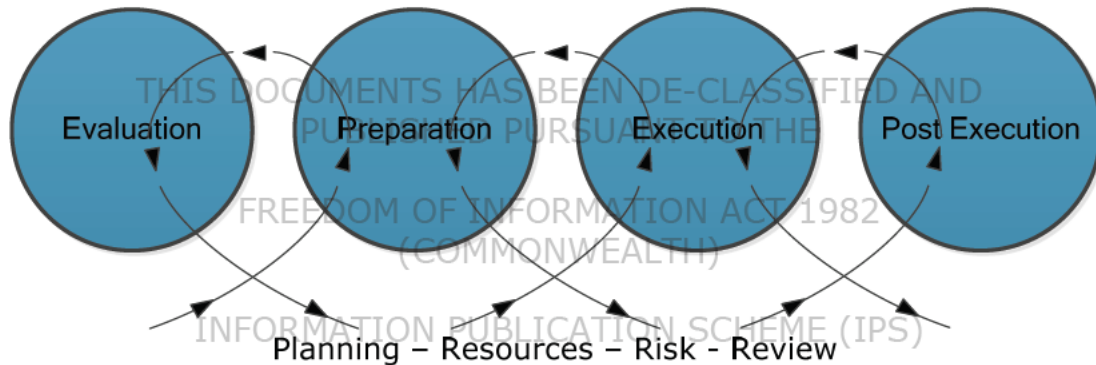
Risk directly related to investigations is articulated in the [Investigation Doctrine](#).

Decisions

Decisions are required to be:

- Reasonable; and
- Proportionate; and
- Necessary; and
- Recorded

The search warrant begins at the evaluation phase and continues through to the post execution phase. Throughout the four defined phases, dynamic considerations exist for planning, resources, risk and review.



REQUIREMENTS:

1. Evaluation

The evaluation phase is the consideration of a search warrant through the assessment of all information and the availability of resources in-line with the investigative strategy.

In evaluating the use of a search warrant, the member **must**;

Identify and apply the relevant legislation being criminal, civil or inquest

- The appropriate powers sought under the search warrant **must** be identified to ensure they are the most suitable way of obtaining evidence.
- The offence/s or matter being investigated **must** be identified to establish jurisdiction and lawful utilisation of a warrant.

Decide if the search warrant is the most appropriate tool for obtaining evidential material

- The search warrant **must** be deemed the most appropriate tool after other options have been considered.
- In this phase the substantial risk lies in the decision to proceed or not to proceed. The risks relating to this decision **must** be incorporated into the decision and recorded.
- The evaluation of a search warrant **must** be complemented by an investigation strategy that incorporates the use of that search warrant.
- The likely use of resources **should** be evaluated to assess the viability of undertaking a search warrant.
- Known intelligence **must** be examined in an objective manner and a critical analysis of the material undertaken.
- The decision to utilise a search warrant **must** be reasonable in the circumstance.
- The use of a search warrant **must** be proportionate to the circumstance.

Justify and record the decision

- The decision to proceed or not proceed with the search warrant process must be made and recorded by the member.

- When recording the decision the member **must** include how the decision was made. This should include a summary referencing the application of an investigative mindset to the known facts.
- The member responsible for the decision **should** be the case officer, although the decision may be made by the Superintendent/Senior Investigating Officer (SIO) or relevant Team Leader.

2. Preparation

The preparation phase is the completion of legislative and administrative processes necessary to obtain a search warrant and the development and communication of a plan for its execution.

In preparing for search warrant execution, the member **must**;

Comply with legislation pertaining to the application and issuing of a warrant

- Documents drafted for the search warrant **must** be appropriate and lawful.
- Documents **must** be reviewed. They **must** be reviewed through self, peer and supervisory review mechanisms.
- Intelligence/evidence for the justification of a warrant **must** be collected.
- The warrant **must** be issued appropriately by a lawful authorising/issuing officer.
- The threshold, whether suspicion or belief, **must** be satisfied for the issue of a search warrant.
- Applicable legislation for the particular search warrant type **must** be complied with.

Continually determine the viability of executing the search warrant

- The viability of identified outcomes **must** be continually assessed, with particular regard to risk and resources.
- The search warrant **must** be checked to identify if targeted person/premises or vehicles are subject to other investigations within the AFP or other investigative agencies.
- The scale of the investigation and the need for senior executive briefing and support **should** be considered.

- The consequence of overt investigative action, such as a search warrant, **must** be recognised and investigative strategies developed that include consideration of political, media and public interest.
- The use of a delayed notification warrant **should** be considered if the search warrant relates to Counter Terrorism.
- The member **must** continue to assess the viability of executing the search warrant through applying the investigative mindset and having regard to the fact that it is reasonable, proportionate and necessary.
- Consideration **should** be given to the expected timeframe for the execution phase and the subsequent effect on resourcing.
- Immediately prior to anticipated entry to a premises, a rendezvous (RV) briefing **must** be given to ensure viability of entering the execution phase.

Establish an execution plan

- A strategy **must** be devised and documented outlining the objectives and extent of the search.
- A tactical plan **must** be developed. The tactical plan **should** be recorded as soon as practicable.
- The employment of specialist support services during warrant execution **must** be based on their capabilities, effectiveness, cost and relevance to the objectives. A documented plan for the coordination of support services **must** be completed.
- A plan **must** be completed for anticipated interviews and arrests.
- A briefing **must** be provided to all members involved in the search warrant and the briefing **must** convey understanding of allocated roles and potential risks.
- The AFP risk management framework **must** be referred to during the establishment of an execution plan.
- Planning **must** be undertaken with reference to the [investigation planning page](#).

3. Execution

The execution phase is the operational activity exercising the authority of a search warrant to obtain evidential material. All activity undertaken must be reasonable, proportionate and necessary, relative to the investigation strategy.

During the execution of a search warrant, the warrant holder **must**;

Ensure the integrity of evidential material identified during the execution phase of the warrant, in order to maximise admissibility

- Search activities (person or premises) **must** be reasonable and proportionate and aligned to intent of the warrant and undertaken in a safe, systematic and thorough manner.
- The scene **should** be recorded prior, during and post search activity.
- The use of an independent person **must** be considered when the premises/conveyance is unoccupied or no owner is present.
- An attempt **should** be made to establish a rapport with the subject/occupier to facilitate questioning on items located during the search.
- The warrant holder **must** ensure that all activities are undertaken in accordance with the requirements of any specialist services in attendance (i.e. crime scenes, digital forensics) and appropriate governance.
- The warrant holder **must** be responsible for seized items.
- Actions and decisions **must** be recorded, outlining reasons/justification.
- Recognition, seizure and subsequent management of evidential material **must** be undertaken to ensure the following:
 - (a) Seizure or movement is relevant.
 - (b) The integrity of the evidential material is not compromised.
 - (c) The potential for contamination is minimised.
 - (d) Evidence continuity and security is maintained.
 - (e) The potential for admissibility is maximised (apply relevant legislative provisions).

Comply with relevant legislation

- The warrant holder **must** have an understanding of powers (general and specific) ensuring all actions relating to forced entry and subject control/arrest are in accordance with legislative requirements.
- All conversations/interviews (as applicable to warrant) **must** be compliant with Crimes Act 1914.

- All actions undertaken **must** be authorised under the warrant and a copy of the warrant and receipt of seized or moved property is provided.
- Operational activity **must** be conducted in accordance with Workplace Health and Safety legislation (*WHS Act 2011*). This includes the use of specialist teams such as Hazardous Materials (HAZMAT) etc.
- Operational activity **must** address our duty of care to AFP personnel and members of the public.

Ensure warrant is undertaken with appropriate command and control

- All items involved in the warrant execution **must** be removed from the premises, including the original warrant at the completion.
- The warrant holder **should** be involved in the planning and direction of search activity (in consultation with search coordinator), recording decisions and monitoring progress of the search.
- The security of the premises/person and appropriate control of the occupier/subject **must** be maintained.
- Roles **must** be allocated by the warrant holder/team leader as required according to the scale and complexity of the warrant with continual liaison between these roles.
- Communication **must** be maintained with key stakeholders (such as Team Leader, Incident Centre) including the provision of situation reports.
- An appropriate area **should** be allocated to the property officer allowing easy communication with the warrant holder for decisions regarding seizure or movement of exhibits.
- The integrity of search activity **should** be maintained through effective communication and leadership.
- The warrant holder **should** ensure the application of relevant resources and management of resources, including liaison with support services.

4. Post execution

The post execution phase consists of the examination, recording and communication of outcomes and the acquittal of legal, investigative and administrative requirements arising from the execution of a search warrant.

During the post execution phase, the member must:

Examine, record and communicate outcomes

- A field debrief **must** be conducted to assess and review the activity of the search warrant as soon as practicable after execution, assessing the welfare of colleagues and establishing any follow up inquiries or actions.
- Relevant stakeholders **should** be briefed on the conclusion of the search warrant.
- A debrief **should** be conducted with the warrant team to allocate post execution tasks and responsibilities.
- The member **should** assess any potential human source that may have been developed through undertaking the search warrant.
- Communications, outcomes and lessons learnt **should** be recorded.
- The seized or moved material **must** be examined. This examination should result in an accurate assessment of how the material will be acquitted.

Acquit legal requirements

- Legal requirements, such as those articulated under Crimes Act 1914 Sections 3K, 3LB and 3R **must** be addressed.
- Field record of interview (ROI) **must** be copied and distributed as required.
- Seized and moved material **must** be analysed and returned to owner if not relevant to the investigation.
- All claims of privilege **must** be examined and incorporated into the handling and examination of seized and moved material.

Acquit administrative requirements

- Use of Force reports (if required) **must** be submitted.
- All members **must** acquit their obligations under the Enterprise Agreement (e.g. time recording), financial obligations and WHS.
- Material used on the search warrant **should** be identified and replaced in search kits.
- The warrant holder **must** ensure the warrant is endorsed and uploaded to the case management system.
- Exhibits **must** be lodged.

Acquit investigative requirements

- The continuity of exhibits **must** be maintained through effective management.
- The continuity of Police generated evidential material (i.e. audio/photo) **must** be maintained.
- Evidence **must** be preserved including the downloading of digital evidence and video recordings.
- All identified avenues of inquiry **should** be addressed.
- Relevant support services **should** be tasked (i.e. Forensics).
- Police statements from all members attending the warrant **should** be drafted in preparation for the creation of a brief of evidence.
- Seized or moved material **must** be reviewed or examined for relevance to the investigation objectives and information gathering. The results **must** be recorded.
- Intelligence **should** be analysed and disseminated to relevant areas.

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ROLES:

Roles as listed below are scalable according to the size and complexity of the warrant/investigation, and a member may fulfil more than one role. Not all roles are applicable for all warrants. It is expected that members performing the roles as listed in this standard (with the exception of the independent person) are sworn AFP appointees with current Operational Safety qualification and relevant security clearance. Any departure from this is to be reflected in the associated risk documentation.

Case officer:

The case officer has overall responsibility for the use of the warrant within the investigation; decision to proceed in the evaluation phase, determining priorities within the execution phase and acquittal of requirements in the post execution phase.

The case officer may be the warrant holder or may delegate this role (particularly in the case of simultaneous warrants).

Warrant holder (executing officer):

The warrant holder must be a constable named in the warrant, responsible for ensuring the lawful execution of the warrant. The warrant holder will direct the operational activity including the entry and search (can be allocated to another however power is granted to warrant holder) and the recording of actions and decisions.

The warrant holder is responsible for possessing the warrant at the time of execution, providing a copy and an explanation to the occupier (if relevant) and recording the conversation with the occupier. The warrant holder must have knowledge of the investigation and is responsible for the seizure and/or movement of relevant evidential material and the provision of evidence regarding seizure to the court. The warrant holder must ensure a copy of the seizure and/or movement record is provided to the occupier.

The warrant holder is then responsible for endorsing the warrant during the post execution phase.

The warrant holder should provide a copy of the Rights of the Occupier or Rights of the Person Searched.

Warrant team leader:

A warrant team leader does not have to be named as a warrant holder in the execution of a search warrant. The team leader is responsible for the coordination of responsibilities and the management of resources using command and control principles.

In the absence of a warrant team leader the warrant holder must assume the duties of the team leader.

Independent person:

The independent person is present at a warrant to provide an unbiased function protecting the interests of the occupier (in their absence) and police alike. The independent person ensures that the execution of the warrant is conducted in a transparent and reasonable manner.

The independent person must not attend briefings prior to, nor assist in, the warrant execution or search in order to retain objectivity.

Entry team:

The entry team is responsible for affecting the safe and efficient entry to the premises or conveyance when directed by the warrant holder (or as delegated) and the security of the same.

The entry team is responsible for the provision, use and subsequent removal of required entry equipment and recording of their actions undertaken.

Property officer:

The property officer is responsible for the recording and continuity of items seized or moved during the execution of a search warrant. The property officer ensures all necessary equipment for the role is taken to the warrant premises/location of person and is responsible for ensuring property and exhibits are handled in accordance with the National Guideline on property and exhibits.

The property officer will have an understanding of the warrant conditions and perform the initial triage of seized items. The property officer must complete the labelling of seized or moved items and accurately record them as per the appropriate AFP property record. The property officer is responsible for maintaining continuity of property during transport to AFP premises.

The property officer must be competent to give evidence in court as to the conduct of the search and the continuity of the property seized.

Search coordinator:

The search coordinator is responsible for ensuring a thorough and professional approach to the search; planning, directing and facilitating the recording of the search activity and assigning roles to searchers. The search coordinator is responsible for the systematic

coordination of the search ensuring actions are necessary and proportionate to the items listed in the warrant.

The role of search coordinator is undertaken in conjunction with the property officer, and in some circumstances may be performed by the same member.

Searchers:

Searchers are responsible for understanding the warrant conditions and searching, locating, identifying and recording evidential items at the direction of the search coordinator.

Searchers should use thorough and systematic search techniques, taking appropriate precautionary measures to prevent or at least minimise contamination, bringing relevant located items to the attention of warrant holder and recording seizures.

Video and audio:

The video and audio recording officer is responsible for creating a recording of the search. The premises is to be recorded prior to the search (internally and externally), during the search and prior to police departure. During the search activity, the officer will record areas/rooms being searched, property items before and during seizure (cash counting etc.) and any damage incurred.

In the post execution phase, the video and audio recording officer is responsible for uploading of photos and videos in accordance with National Guideline on property and exhibits.

Interviewer:

The interviewer is responsible for planning, conducting and recording interview(s) with the subject(s) in accordance with the legislation and AFP best practice, ensuring a corroborator is present.

Arrest officers:

Arrest officers are responsible for the lawful arrest and subsequent detention of a person in accordance with relevant legislation. A minimum of two sworn officers with current Operational Safety qualifications are required and should include one which is the same sex as the person under arrest.

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Constable assisting:

A constable assisting (as authorised by the warrant holder) performs the role according to the relevant legislation and their specific skills/expertise.

First aid:

The first aid officer is a first aid trained member responsible for the provision of access to a first aid kit during search warrant execution. All first aid qualified members in attendance are responsible for personal safety.

Communications officer:

The communications officer is responsible for the coordination of external communications during a warrant including situation reports and briefings provided to key stakeholders (e.g. Investigations Centre, State Police, Senior Investigating Officer).

The communications officer may perform this in addition to another role during the execution phase of the warrant.

Security:

The nominated security officer is responsible for securing control of persons and/or premises as directed by the warrant holder.

Corroborator: (to warrant holder, includes note taker)

The corroborator is responsible for documenting significant conversations, actions and legislation requirements at the direction of the warrant holder. The corroborator ensures the recording of all occupant(s)/persons present, events and times relating to the search.

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REFERENCED DOCUMENTS:

The following documents, in whole or in part, are normatively referenced in this document and are indispensable for its application.

- [Crimes Act 1914](#)
- [Proceeds of Crimes Act 2002](#)
- [Crimes Act 1900 \(ACT\)](#)
- [Drugs of Dependence Act 1989 \(ACT\)](#)
- [Coroners Act 1997 \(ACT\)](#)
- [National Guideline on property and exhibits](#)

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