



**Australian Government**  
**Australian Customs and  
Border Protection Service**

## INSTRUCTIONS AND GUIDELINES

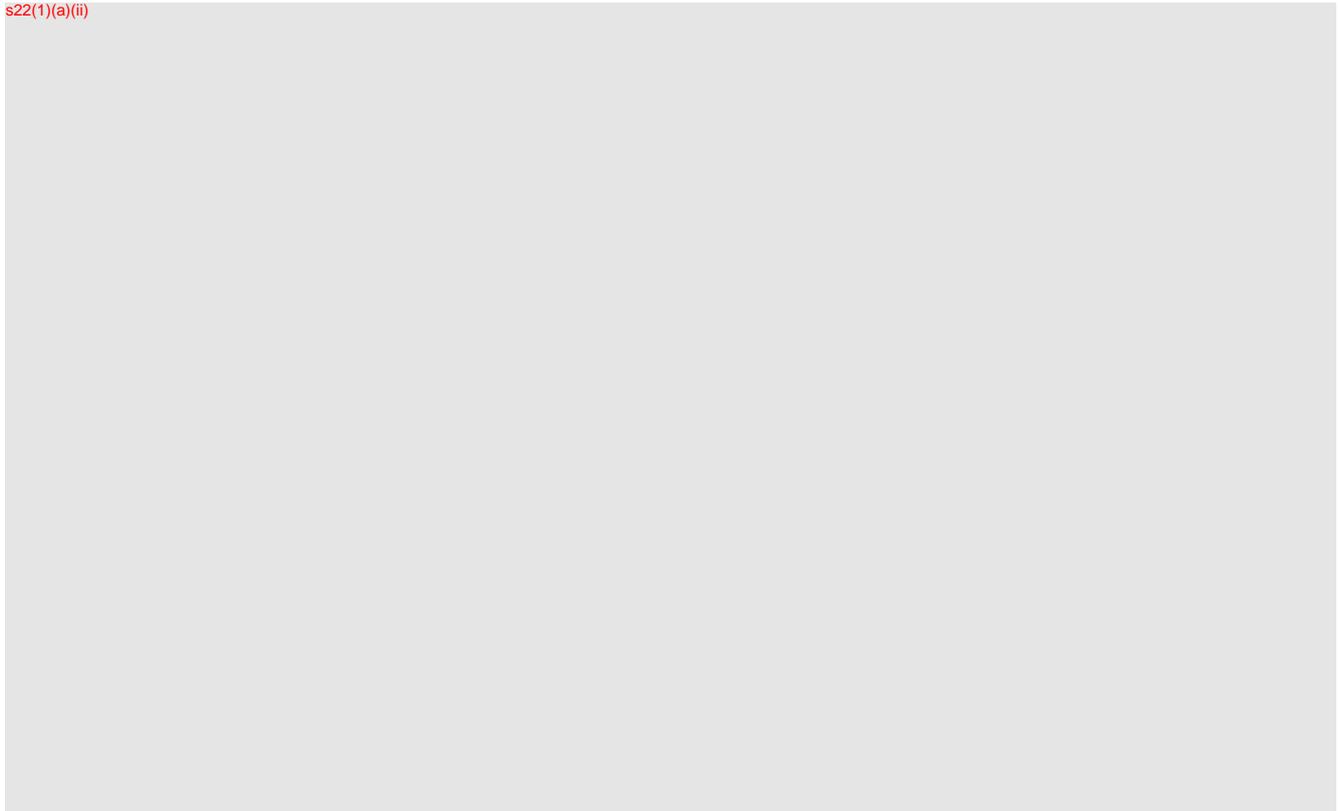
<p><b>Customs Act Warrants</b></p> <p><b>May 2011</b></p>
<p><b>This Instruction &amp; Guideline refers to Practice Statement: 2008/13 Customs Investigations</b></p>

Published date:	25 May 2011
s22(1)(a)(ii)	
<b>Subject:</b>	Customs Act Warrants
<b>Purpose:</b>	To ensure that Customs and Border Protection officers use a nationally consistent approach when planning, managing and executing Customs Act warrants.
s22(1)(a)(ii)	
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Irrelevant to request

Section 22(1)(a)(ii)

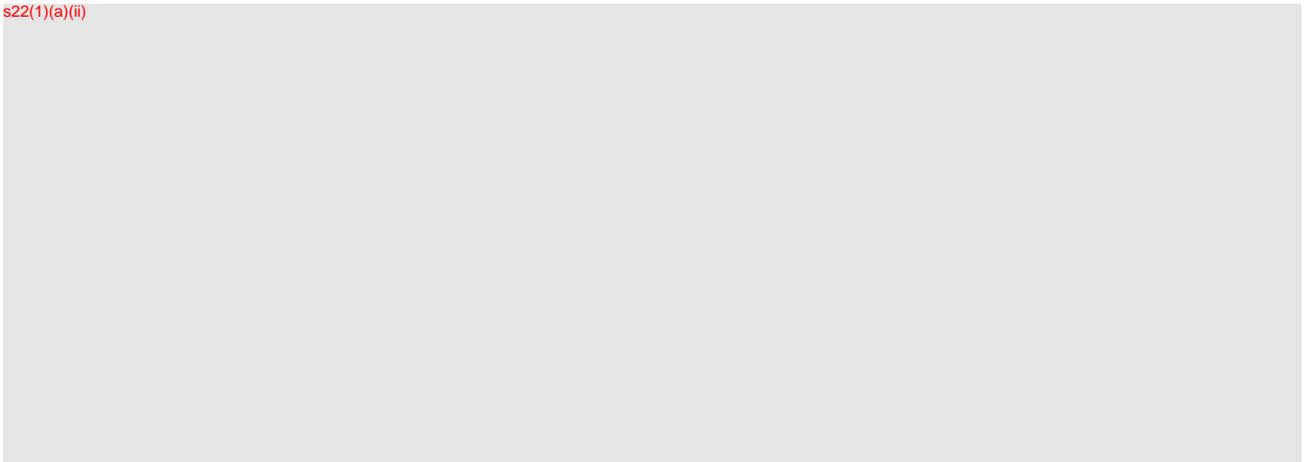


**Attach legal professional privilege guidelines to warrants**

*Legal premises* Attach a copy of the General Guidelines between the AFP and the Law Council of Australia (the General Guidelines) to the warrant.  
A copy of the General Guidelines is included at [Annexure 1](#).

*Non-legal premises* Attach a copy of the document *Claims for Legal Professional Privilege: Premises other than those of a Lawyer, Law Society or Like Institution* (CDPP Guidelines) to the warrant.  
If the Executing Officer determines that it is likely that a search of a person will be conducted, and that documents subject to Legal Professional Privilege (LPP) are likely to be found on the person, a copy of the document *Claims for Legal Professional Privilege: Searches of the Person* (CDPP Guidelines) must be attached to the warrant.  
A copy of the CDPP Guidelines is included at [Annexure 2](#).

See also [section 8](#) of this Instruction and Guideline.



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Irrelevant to request

Section 22(1)(a)(ii)

## 8. Legal Professional Privilege (LPP)

### General principles of LPP

1. LPP attaches to documents created for the dominant purpose of giving or receiving legal advice, or for use in existing or anticipated legal proceedings.
2. LPP may apply to communications in any form of media – including electronic mediums.
3. LPP procedures differ depending on whether the warrant execution is performed at the premises of a lawyer or law society (or other similar body) or at a non-legal premises.
4. LPP will attach to communications that came into existence for the **dominant** purpose of giving or receiving legal advice.
5. Failure to claim LPP at the time of warrant execution does not necessarily result in a waiver of privilege.
6. Mere examination of documents to determine their nature (as opposed to reading the documents) will not result in a breach of LPP.
7. LPP does not attach to communications that were used to facilitate a crime or fraud.
8. The mere fact that a lawyer has drafted, or possesses a communication will not in itself substantiate a claim for LPP

Example: a list of clients will not normally be subject to LPP

Example: a conveyancing file will not normally be subject to LPP except to the extent that the file contains legal advice provided to the client.

9. LPP only applies where a lawyer is consulted in their professional capacity as a lawyer – a lawyer must also hold a practising certificate or possess a statutory right to appear in court.
10. LPP may be waived by the client
  - Voluntary disclosure by the client may result in waiver;
  - The client using documents in a manner inconsistent with LPP may result in waiver;
  - If LPP is held jointly by two or more persons, waiver will only be effective if all those who hold the privilege waive it.

The CDPP Search Warrant Manual provides additional guidance on LPP.

### LPP claimed at legal premises

The legal profession and the Commonwealth have established an agreement concerning claims made for LPP at legal premises (the *General Guidelines*).

Customs and Border Protection **CANNOT** unilaterally depart from the agreement.

A copy of the *General Guidelines (Annexure 1)* is included at [Appendix 1](#).

*Conduct search in* A search of legal premises **MUST** be conducted in accordance with the

accordance with  
General Guidelines

General Guidelines.

Flow chart of General  
Guidelines

A basic flow chart of the procedures established in the General Guidelines is provided below at **Figure 2**.

Delayed seizure if  
General Guidelines  
are adhered to

Officers should be aware that where documents are collected in accordance with the *General Guidelines* and delivered to a third party, seizure within the terms of the relevant warrant has not occurred. Rather, the execution of the search warrant in relation to those documents is stayed and replaced with a consent procedure.

If a determination confirms that LPP is not applicable to the documents, the relevant documents should be seized under the warrant.

Occupier declines to  
comply with the  
General Guidelines

If the occupier of a premises refuses to comply with the *General Guidelines*, the Executing Officer should proceed to execute the warrant in the normal fashion doing the best they can to ensure that privileged material is not read or seized (see paragraph 34 of the *General Guidelines*).

Alternatively, as the departure from the *General Guidelines* will not be unilateral, the Executing Officer and the occupier may formulate an alternative procedure to follow.

The General  
Guidelines and  
electronic  
communications

Please refer to the section below titled *LPP claimed over electronic communications*.

### LPP claimed at non-legal premises

The CDPP has drafted guidelines (the *CDPP Guidelines*) to address claims for LPP made during warrants conducted on non-legal premises.

Part 1 of the guidelines is entitled: *Claims for Legal Professional Privilege: Premises other than those of a lawyer, law society or like institution*.

Part 2 of the guidelines is entitled: *Claims for Legal Professional Privilege: Searches of the Person*.

The procedures contained in Parts 1 and 2 are essentially the same with minor variations for practical convenience.

A copy of the CDPP Guidelines (*Annexure 2*) is included at [Appendix One](#).

Customs and Border  
Protection policy  
concerning the CDPP  
Guidelines

Customs and Border Protection is not compelled to adhere to the *CDPP Guidelines*.

Nonetheless, Customs and Border Protection officers should progress claims for LPP in accordance with the *CDPP Guidelines* as far as practicable.

A basic flow chart illustrating the procedures established by the *CDPP Guidelines* is included at **Figure 3**.

Delayed seizure if CDPP  
Guidelines are adhered  
to

Officers should be aware that where documents are collected in accordance with the *CDPP Guidelines* and delivered to a third party, seizure within the terms of the relevant warrant has not occurred. Rather, the execution of the search warrant in relation to those documents is stayed and replaced with a consent procedure.

If a determination confirms that LPP is not applicable to the documents, the relevant documents should be seized under the warrant.

Occupier declines to

Cooperation is fundamental to managing claims for LPP.

*comply with the procedures contained in the CDPP Guidelines*

If the owner / occupier declines to comply with the procedures contained in the CDPP Guidelines, the Executing Officer should continue to execute the search warrant in the normal fashion (doing the best they can to ensure that privileged material is not read or seized).

Alternatively, the Executing Officer and the occupier may formulate alternate procedures.

### **LPP claimed over electronic communications**

Claims for LPP made over electronic communications should be treated in the same way as claims over communications held in paper form, although different practical considerations will apply.

The general principle is that if a claim for LPP is made in relation to one or more communications on a hard drive or storage device, the entire hard drive or storage device must be treated as privileged unless it is possible to isolate the privileged documents. This situation applies even if the documents over which LPP is claimed are irrelevant to the investigation.

This issue raises a conceptual problem – materials subject to LPP cannot be seized, on the other hand, access to relevant materials not subject to LPP should not be prevented. Where this issue arises, the Executing Officer should attempt to get the occupier to agree to the procedures in the *General Guidelines* or the *CDPP Guidelines* as applicable. If agreement is not forthcoming, an alternative course of action would be to seek a court order enabling suitable processes to be put in place.

If agreement is forthcoming, the Executing Officer should consider the factors outlined below.

#### *Legal premises*

If the occupier of the legal premises agrees to comply with the *General Guidelines*, the Executing Officer and the occupier will have to agree on a procedure which allows for the contents of the computer to be copied without the communications being viewed by the Executing Officer.

Common practices include:

1. Copy the entire hard drive and manage in accordance with the *General Guidelines*.
2. If relevant communications are limited to specific files on a hard drive, copy the specific files and manage in accordance with the *General Guidelines*.

If the occupier of the legal premises refuses to comply with the *General Guidelines*, the Executing Officer should proceed with the warrant execution as normal and in accordance with the *General Guidelines*. Initial options available to the Executing Officer include:

1. Examine the hard drive at the premises
  - Examine the hard drive (without reading) to determine if communications are relevant to the investigation;
  - If communications are relevant to the investigation, copy the hard drive, seize the copy, place in a sealed envelope / container and remove from the premises in accordance with normal seizure procedures.
2. Remove the hard drive and examine at a different location
  - Examine the hard drive (without reading) to determine if communications are relevant to the investigation;
  - If communications are relevant to the investigation, copy the hard drive, seize the copy and place in a sealed envelope / container.

#### *Non-legal premises*

If the occupier of the non - legal premises agrees to comply with the *CDPP Guidelines*, the Executing Officer and the occupier will have to agree on a

procedure which allows for the contents of the computer to be copied without the communications being read by the Executing Officer.

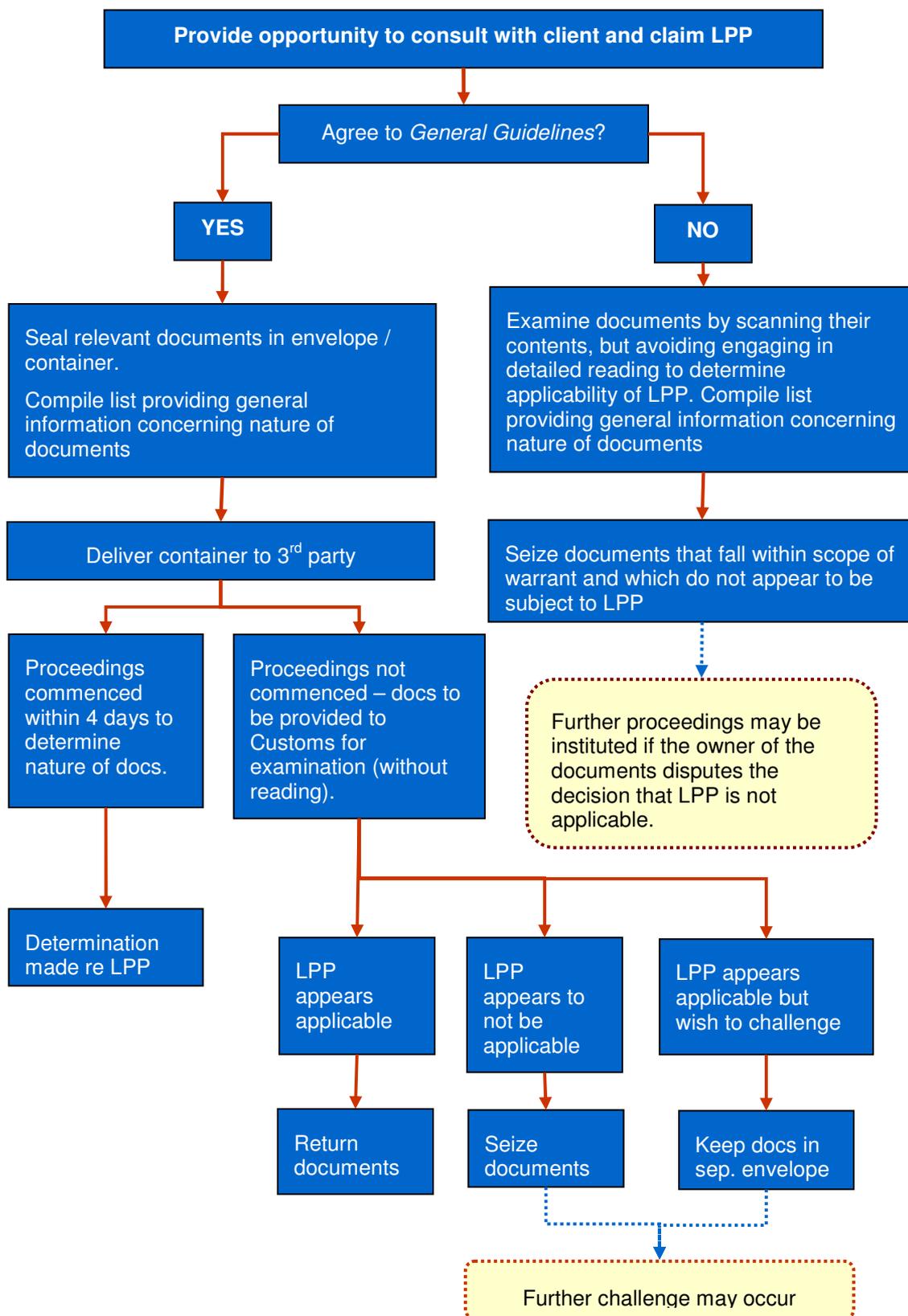
Common practice is to copy the entire hard drive and place the copy in a sealed container etc (in accordance with the *CDPP Guidelines*). Alternatively, if relevant communications are limited to specific files on a hard drive, it may be more appropriate to simply copy the relevant files.

Where appropriate, the Executing Officer and the occupier may negotiate and agree on an alternate procedure if such would protect the documents and facilitate the investigation.

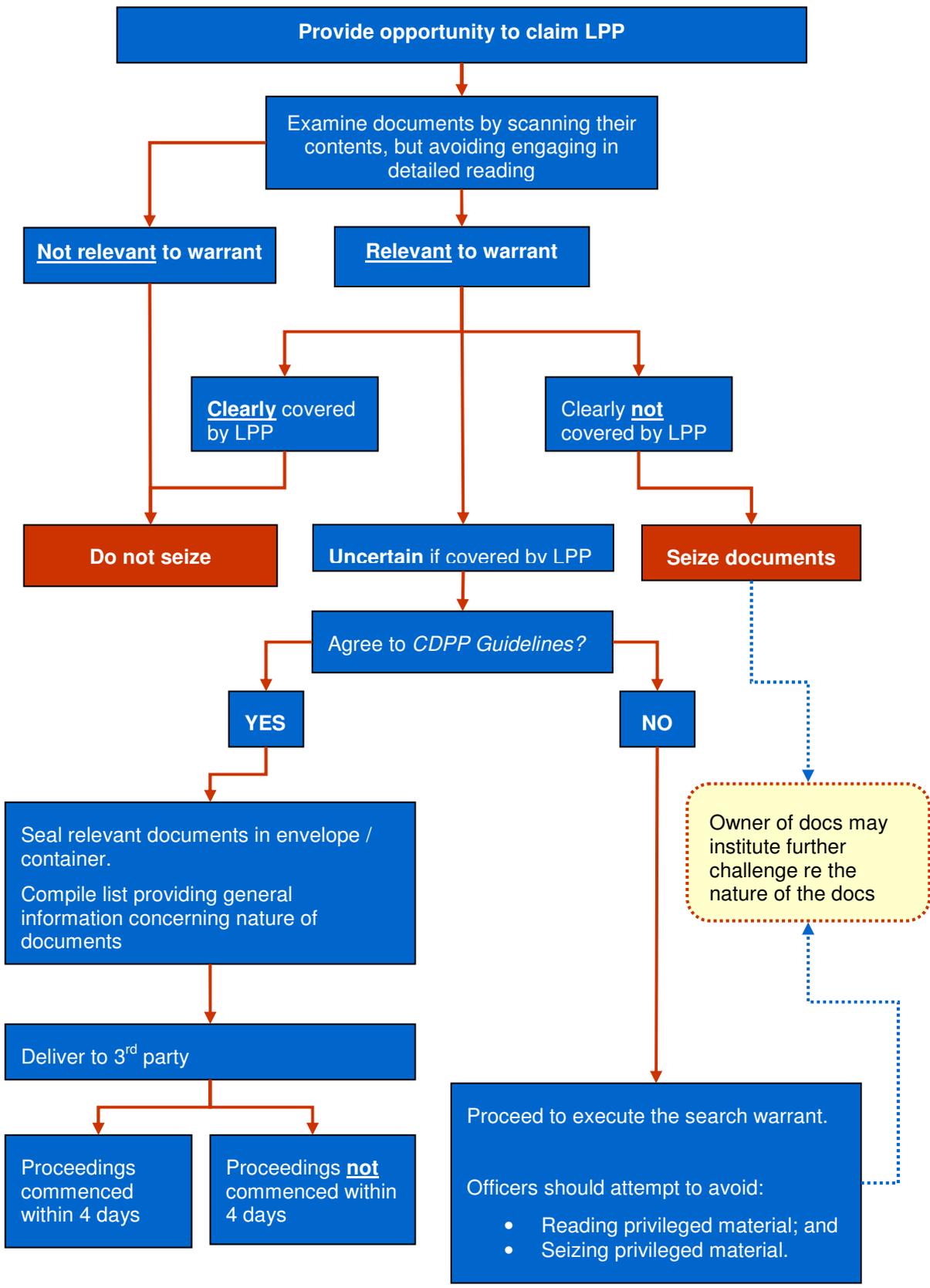
If the occupier refuses to comply with the *CDPP Guidelines*, the Executing Officer should proceed with the warrant execution as normal. Initial options available to the Executing Officer include:

1. Examine the hard drive at the premises
  - Examine the hard drive (without reading) to determine if communications are relevant to the investigation;
  - If communications are relevant to the investigation, copy the hard drive, seize the copy, place in a sealed envelope / container and remove from the premises in accordance with normal seizure procedures.
2. Remove the hard drive and examine at a different location
  - Examine the hard drive (without reading) to determine if communications are relevant to the investigation;
  - If communications are relevant to the investigation, copy the hard drive, seize the copy and place in a sealed envelope / container.

**Figure 2** – flow chart of procedures established by the *General Guidelines* for LPP claimed at legal premises



**Figure 3** – flow chart of procedures established by the *CDPP Guidelines* for LPP claimed at non-legal premises



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Irrelevant to request

Section 22(1)(a)(ii)

## APPENDIX ONE

### Annexure 1 – General Guidelines

#### GENERAL GUIDELINES BETWEEN THE AUSTRALIAN FEDERAL POLICE AND THE LAW COUNCIL OF AUSTRALIA AS TO THE EXECUTION OF SEARCH WARRANTS ON LAWYERS' PREMISES, LAW SOCIETIES AND LIKE INSTITUTIONS IN CIRCUMSTANCES WHERE A CLAIM OF LEGAL PROFESSIONAL PRIVILEGE IS MADE

##### Preliminary

1. For the purpose of these guidelines, 'Law Society' means a Law Society, a Bar Association, a Law Institute and any similar professional body of lawyers, and includes a body or tribunal established for the purpose of receiving or investigating complaints involving issues of professional standards or relating to the delivery of professional legal services against barristers and solicitors or for the purpose of disciplining barristers or solicitors.

##### Background

2. Difficulties are sometimes experienced on the occasions that it becomes necessary for an AFP officer to obtain and execute a search warrant directed at the office of a solicitor, the chambers of a barrister, or the premises of a Law Society.

3. In *Baker v. Campbell* (1983) 153 CLR 52 the question posed in the case stated was:-  
" In the event that legal professional privilege attaches to and is maintained in respect of ... documents held by (a lawyer) can those documents be properly made the subject of a search warrant issued under s.10 of the Crimes Act?"

The question was answered 'No'.

##### Legislation

4. The Crimes Act 1914 provides that:-
- (a) an issuing officer may issue a warrant to search premises if the officer is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material at the premises [section 3E(1)];
  - (b) an issuing officer may issue a warrant authorising an ordinary search or a frisk search of a person if the officer is satisfied by information on oath that there are reasonable grounds for suspecting that the person has in his or her possession, or will within the next 72 hours have in his or her possession, any evidential material [section 3E(2)]; and
  - (c) Part 1AA of the Crimes Act does not affect the law relating to legal professional privilege (section 3ZX).

## Overview

5. It is seen as desirable that an agreed procedure should be laid down which, if followed, will negate or reduce the risks of documents which may be subject of legal professional privilege being seized pursuant to section 3E search warrants.

6. Accordingly, and subject to the provisions of the Crimes Act 1914 (Cth), these general guidelines have been agreed between the Commissioner of the Australian Federal Police on the one hand and the Law Council of Australia on the other.

7. While focussing on search warrants issued pursuant to the Crimes Act, the guidelines are to be interpreted as applying to search warrants issued under other Commonwealth legislation on lawyers' premises or Law Societies where a claim of legal professional privilege is made.

8. The Law Council through its constituent bodies, the Bar Associations and the Law Societies in all of the Australian States and internal Territories, represents the great majority of Australia's practising lawyers.

9. The discussions which led to the initial guidelines relating to lawyers' premises were convened by the Commonwealth Director of Public Prosecutions (DPP) and representatives of the Office of the DPP have been involved in the subsequent discussions.

## Professional Privilege

10. The matter of legal professional privilege (ie concerning communications passing between a lawyer and his/her clients/s, and, in some circumstances, a third party, for the purpose of the lawyer providing legal advice to the client/s) is subject to various statutory provisions [eg the Evidence Act 1995 (Commonwealth) (2), the Evidence Act 1995 (NSW)] and the common law.

11. As indicated in the footnote, the common law rules apply before the commencement of court proceedings. From a Commonwealth perspective, the common law rules will apply prior to the start of proceedings, but also during proceedings if those proceedings are conducted in a State court which is not subject to legislation similar to the Commonwealth and NSW Evidence Acts.

## Effect of Guidelines

12. The effect of these guidelines, in summary, is that, where the lawyer or Law Society is prepared to co-operate with the police search team, no member of that team will inspect any document identified as potentially within the warrant until the lawyer or Law Society has been given the opportunity to claim legal professional privilege in respect of any of the documents so identified.

13. Where a claim is made in such circumstances, no member of the police search team will inspect any document the subject of the claim until either (a) the claim is abandoned or (b) the claim is dismissed by a court.

14. It is agreed that application for a search warrant shall only be made after consultation with the Office of the DPP.

15. These guidelines proceed on the assumption that any particular warrant to which they relate has been duly issued and is good on its face. It is recognised that a lawyer or Law Society upon whose premises the search warrant is to be executed may want to take legal advice as to those matters.

## Procedures in detail

16. Upon attendance at the premises of the lawyer or Law Society, the executing officer should explain the purposes of the search and invite the lawyer or representative of the Law Society to co-operate in the conduct of the search. If the lawyer, a partner or employee, or the Law Society or an employee, is suspected of involvement in the commission of the alleged offence the executing officer should say so.

17. Identification of the executing officer and all other members of the search team should be provided to the lawyer or representative of the Law Society. The search team should be kept to the lowest number of persons reasonably necessary in all the circumstances.

18. If no lawyer, or representative of the Law Society, is in attendance at the premises the subject of the search warrant then, if practicable, the premises or relevant part of the premises should be sealed and execution of the warrant deferred for a period which the executing officer in his/her discretion considers reasonable in all the circumstances to enable any lawyer or responsible person connected with the premises to attend or, if that is not practicable, to enable arrangements for another person to attend the premises.

19. The executing officer or Constable/s assisting must be mindful of and comply with the relevant statutory and/or common law obligations attaching to the execution of the search warrant/s in question, and to the provisions of Part 1AA of the Crimes Act 1914 in particular in respect to search warrants issued pursuant to that Act.

20. A reasonable time should be allowed to the lawyer to enable him/her to consult with his/her client/s or to the Law Society to enable it to consult with the legal representatives of the person/s to whose affairs the documents relate, and/or for the lawyer or Law Society to obtain legal advice.

21. For this reason, it is desirable that warrants be executed only during normal working hours. However, when warrants are executed outside normal working hours, allowances should be made for delays should the lawyer wish to contact his/her client or the Law Society to contact legal representatives, or for either the lawyer or Law Society to take legal advice.

22. Having informed his/her client/s of the position or the Law Society having informed the legal representative/s of the person/s to whose affairs the documents relate of the position, and/or either having obtained legal advice, the lawyer or Law Society should, consistent with his/her client's/clients' instructions or the instructions of the legal representatives of the person/s to whose affairs the documents relate, cooperate with the police officers by assisting them in locating all documents which may be within the warrant.

23. If the executing officer requires access to the office records systems the lawyer or Law Society should assist if necessary by explaining the records system to the police officer.

24. Where the lawyer or Law Society agrees to assist the search team the procedures set out below should be followed:-

- (a) in respect of all documents identified by the lawyer or Law Society and/or further identified by the executing officer as potentially within the warrant, the executing officer should, before proceeding to further execute the warrant (by inspection or otherwise) and to seize the documents, give the lawyer or Law Society the opportunity to claim legal professional privilege in respect of any of those documents;
- (b) if the lawyer or Law Society asserts a claim of legal professional privilege in relation to any of those documents then the lawyer or Law Society should be prepared to indicate to the executing officer the grounds upon which the claim is made and in whose name the claim is made; and
- (c) in respect of those documents which the lawyer or Law Society claim are subject to legal professional privilege, the search team shall proceed in accordance with the guidelines as follows. In respect of the remaining documents, the search team may then proceed to complete the execution of warrant.

25. All documents which the lawyer or Law Society claims are subject to legal professional privilege shall under the supervision of the executing officer be placed by the lawyer and/or his/her staff, or the Law Society and/or its representatives, in a container which shall then be sealed.

26. In the event that the lawyer or Law Society desires to take photocopies of any of those documents the lawyer or Law Society shall be permitted to do so under the supervision of the executing officer and at the expense of the lawyer or Law Society before they are placed in the container.

27. A list of the documents shall be prepared by the search team, in co-operation with the lawyer or Law Society, on which is shown general information as to the nature of the documents.

28. That list and the container/s in which the documents have been placed shall then be endorsed to the effect that pursuant to an agreement reached between the lawyer or Law Society and the search team, and having regard to the claims of legal professional privilege made by the lawyer on behalf of his/her client/s or the Law Society on behalf of the person/s

to whose affairs the documents relate, the warrant has not been executed in respect of the documents set out in the list but that those documents have been sealed in the container, which documents are to be given forthwith into the custody of the magistrate or justice who issued the warrant or other independent party (referred to below as the 'third party') agreed upon by the lawyer or Law Society and the executing officer pending resolution of the disputed claims.

29. The list and the container/s in which the documents have been sealed shall then be signed by the executing officer and the lawyer or a representative of the Law Society.

30. The executing officer and the lawyer or representative of the Law Society shall together deliver the container forthwith, along with a copy of the list of the documents, into the possession of the third party, who shall hold the same pending resolution of the disputed claims.

31. If within 3 clear working days (or such longer period as is reasonable which may be agreed by the parties) of the delivery of the documents into the possession of the third party, the lawyer or Law Society has informed the executing officer or his/her agent and the third party or his/her agent that instructions to institute proceedings forthwith to establish the privilege claimed have been received from the client/s on whose behalf the lawyer asserted the privilege, or from the person or person/s on whose behalf the claim has been made by the Law Society, then no further steps shall be taken in relation to the execution of the warrant until either:-

- (a) a further period of 1 clear working day (or such further period as may reasonably be agreed) elapses without such proceedings having been instituted; or
- (b) proceedings to establish the privilege have failed; or
- (c) an agreement is reached between the parties as to the disclosure of some or all of the documents subject to the claim of legal professional privilege.

32. Where proceedings to establish the privilege claimed have been instituted, arrangements shall forthwith be made to deliver the documents held by the third party into the possession of the Registrar of the Court in which the said proceedings have been commenced. The document shall be held by the Registrar pending the order of the Court.

33. Where proceedings to establish the privilege claimed are not instituted within 3 clear working days (or such further period as may have been agreed) of the delivery of the documents into the possession of the third party, or where an agreement is reached between the parties as to the disclosure of some or all of the documents, then the parties shall attend upon the third party and shall advise him/her as to the happening of those matters and shall request him/her, by consent, to release into the possession of the executing officer all the documents being held by the third party or, where the parties have agreed that only some of the documents held by him/her should be released, those documents.

34. In those cases where the lawyer or Law Society refuses to give co-operation, the executing officer should advise that the search will proceed in any event and that, because the search team is not familiar with the office systems of the lawyer or Law Society, this may entail a search of all files and documents in the lawyer's or Law Society's office in order to give full effect to the authority conferred by the warrant.

35. The lawyer or Law Society should also be advised that a document will not be seized if, on inspection, the executing officer considers that the document is either not within the warrant or privileged from seizure. The search team should then proceed forthwith to execute the warrant.

36. These guidelines, which replace those last agreed between the Australian Federal Police and the Law Council of Australia in June 1990, commence with effect

from 3 March 1997.

(Signed)

M Palmer

Commissioner

Australian Federal Police

(Signed)

P Levy

Secretary-General

Law Council of Australia

## **Annexure 2 – CDPP Guidelines**

### **Claims for Legal Professional Privilege: Premises other than those of a Lawyer, Law Society or Like Institution.**

These guidelines should be followed by the executing officer or a constable assisting in any case where a search warrant is being executed on premises other than those of a Lawyer, Law Society or Like Institution and there is a claim for Legal Professional Privilege (or Client Legal Privilege) in respect of documents that are on the premises.

1. The officer may look at each document briefly, and without reading the contents, to determine the general nature of the document and to assess whether the document appears to be relevant to the matters under investigation and whether it appears likely that the document contains privileged material (in JMA Accounting Pty Ltd v CofT [2004] 211 ALR 380 the Full Federal Court ruled that it is not a breach of LPP for an investigator to look at a privileged document for these purposes).
2. If the officer decides that the document is not relevant to the matters under investigation they should return it to the occupier and proceed with the remainder of the search.
3. Similarly if the officer is satisfied, on the basis of a brief examination, that the document is clearly covered by Legal Professional Privilege they should return it to the occupier and proceed with the remainder of the search.
4. If the officer decides that the document appears to relevant to the matters under investigation and forms the view, on the basis of a brief examination, that the document is clearly not covered by Legal Professional Privilege they are entitled to seize the document under the authority of the search warrant.
5. If the officer decides that the document appears to be relevant to the matters under investigation, but cannot form a view on whether or not the document is covered by Legal Professional Privilege, the officer can ask the occupier if they are prepared to agree to follow the procedure set out in this document so that the claim for privilege can be resolved.
6. The relevant procedure is as follows:

The executing officer or a constable assisting will prepare a list of all relevant documents in cooperation with the occupier. The list should show the general nature of each document, the ground on which privilege is claimed, and the name of the person claiming privilege;

The documents will be placed in an envelope or other container which will be sealed;

The list and the container will be signed by the executing officer or constable assisting and the occupier;

The sealed container and a copy of the list will be delivered to a third party agreed between the executing officer or constable assisting and the occupier;

The third party shall hold the container and the copy of the list pending resolution of the claim for privilege;

Subject to any agreement to the contrary, the person claiming privilege will have four working days after delivery to the third party in which to commence proceedings to establish the privilege claimed. If proceedings are commenced within that time the sealed container and the copy of the list will be delivered to the registrar of the court in which the proceedings have been brought. The documents will then be held by the registrar pending the order of the court;

If proceedings are not commenced within four working days, or such other period as may be agreed, the third party will deliver the documents, or such of them as the executing

officer still wishes to examine, to the executing officer and the executing officer will then deal with the documents as if they had been seized under the search warrant at the time of search;

Nothing in the previous dot points prevents the executing officer from discussing a claim for privilege with the person raising the claim. If agreement can be reached on which documents are covered by legal professional privilege, and which are not, the third party will be asked to act in accordance with that agreement.

7. If the occupier agrees to comply with that procedure, and to be bound by it, the officer should proceed to implement the procedure.
8. If the occupier does not agree to comply with that procedure, the executing officer or constable assisting may proceed to execute the search warrant doing the best they can to ensure that they do not read or seize privileged material. There can be no guarantee that they will not inadvertently read or seize privileged material.

## Claims for Legal Professional Privilege: Searches of the Person

These guidelines should be followed by the executing officer or a constable assisting in any case where a search warrant is being executed on a person and there is a claim for Legal Professional Privilege (or Client Legal Privilege) in respect of documents that are in the possession of the person.

1. The officer may look at each document briefly, and without reading the contents, to determine the general nature of the document and to assess whether the document appears to be relevant to the matters under investigation and whether it appears likely that the document contains privileged material (in JMA Accounting Pty Ltd v CofT [2004] 211 ALR 380 the Full Federal Court ruled that it is not a breach of LPP for an investigator to look at a privileged document for these purposes).
2. If the officer decides that the document is not relevant to the matters under investigation they should return it to the person and proceed with the remainder of the search.
3. Similarly if the officer is satisfied, on the basis of a brief examination, that the document is clearly covered by Legal Professional Privilege they should return it to the person and proceed with the remainder of the search.
4. If the officer decides that the document appears to relevant to the matters under investigation and forms the view, on the basis of a brief examination, that the document is clearly not covered by Legal Professional Privilege they are entitled to seize the document under the authority of the search warrant.
5. If the officer decides that the document appears to be relevant to the matters under investigation, but cannot form a view on whether or not the document is covered by Legal Professional Privilege, the officer can ask the person if they are prepared to agree to follow the procedure set out in this document so that the claim for privilege can be resolved.
6. The relevant procedure is as follows:

The executing officer or a constable assisting will prepare a list of all relevant documents in cooperation with the person. The list should show the general nature of each document, the ground on which privilege is claimed, and the name of the person claiming privilege;

The documents will be placed in an envelope or other container which will be sealed;

The list and the container will be signed by the executing officer or constable assisting and the person;

The sealed container and a copy of the list will be delivered to a third party agreed between the executing officer or constable assisting and the person;

The third party shall hold the container and the copy of the list pending resolution of the claim for privilege;

Subject to any agreement to the contrary, the person claiming privilege will have four working days after delivery to the third party in which to commence proceedings to establish the privilege claimed. If proceedings are commenced within that time the sealed container and the copy of the list will be delivered to the registrar of the court in which the proceedings have been brought. The documents will then be held by the registrar pending the order of the court;

If proceedings are not commenced within four working days, or such other period as may be agreed, the third party will deliver the documents, or such of them as the executing officer still wishes to examine, to the executing officer and the executing officer will then deal with the documents as if they had been seized under the search warrant at the time of search;

Nothing in the previous dot points prevents the executing officer from discussing a claim for privilege with the person raising the claim. If agreement can be reached on which

documents are covered by legal professional privilege, and which are not, the third party will be asked to act in accordance with that agreement.

7. If the person agrees to comply with that procedure, and to be bound by it, the officer should proceed to implement the procedure.
8. If the occupier does not agree to comply with that procedure, the executing officer or constable assisting may proceed to execute the search warrant doing the best they can to ensure that they do not read or seize privileged material. There can be no guarantee that they will not inadvertently read or seize privileged material.

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Irrelevant to request

Section 22(1)(a)(ii)