



# **POWERS OF ENTRY PROCEDURES**

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## 1. WHEN CAN A POWER OF ENTRY BE EXERCISED?

A power of entry can be exercised in the following circumstances:

- Under a notice of entry for the purposes of carrying out an inspection ss229 & 230
- Under a written consent from an owner for the purpose of seeking evidence for the purposes of enforcement ss231; 231A
- Under a search warrant for the purpose of seeking evidence for the purposes of enforcement ss231; 231B
- In an emergency situation where the safety of the public or occupants is at risk s232

## 2. WHO MAY EXERCISE A POWER OF ENTRY?

### Essential points:

Only an authorised person can exercise a power of entry. An authorised person is either listed in the Act or authorised by a listed person. All authorised persons should carry and produce an identity card as proof of their authorisation when carrying out a power of entry.

### 2.1. Only authorised persons can exercise a power of entry.

A person is an authorised person either because:

- They are listed as an authorised person; s228(1)(a)-(e)
- A person listed as an authorised person under s228(1)(a)-(d) authorises another person in writing to exercise the same powers under Part 13, Division 2 on his/her behalf. s228(2)

**Exception:** A person authorised under s228(2) cannot authorise others to carry out his or her powers.

### 2.2. Persons listed under the Act as an authorised person: (s228(1))

- (a) municipal building surveyor; or
- (b) a private building surveyor appointed under Part 6; or
- (c) the Commission; or
- (ca) the Plumbing Industry Commission;
- (d) a Minister, public authority or person who is authorised or required by this Act or the regulations to carry out any work or inspection or any other function other than the Building Practitioners Board; or
- (da) a plumbing inspector appointed under Part 12A;
- (db) a compliance auditor appointed under Part 12A;
- (e) a person authorised under subsection (2)

## 2.3. Procedures to follow when authorising a person under s228(2)

- The authority must be in writing s228(2)  
(see sample authorisation in Annexure 1)
- The person or body which authorises the person under s228(2) must give an identity card to that person s228(3)
- The identity card must: s228(4)
  - Display a photograph of the authorised person to whom it is issued;
  - State the person's name;
  - State the fact that he or she is an authorised person

## 2.4. Purpose of identity card

- The authorised person to whom an identity card has been issued **must** produce the card for inspection: s228(5)
  - Before exercising a power under the Act or regulations; and
  - Upon demand during the exercise of a power under the Act or regulations.
- Failure to produce the identity card as required can result in a fine of not more than 1 penalty unit s228(5)

## 2.5. Does a person listed under s228(1) need to have an identity card?

The Act does not require persons listed under s228(1), for example a MBS, to have an identity card. The Act does however require that the persons listed under s228(1) provide persons authorised by the persons listed under s228(2) with an identity card. We recommend however that **all** persons exercising a power of entry have such a card. The production of such a card before and during the exercise of a power of entry will be of assistance should a person argue that they were unaware that they were dealing with an authorised person.

**Note: All persons executing a power of entry are to have and produce an identity card as proof of their authorisation.**

## 3. A NOTICE OF ENTRY FOR THE PURPOSES OF CARRYING OUT AN INSPECTION

### Essential points:

Unless the occupier of a building or land gives an authorised person permission to enter for the purpose of an inspection, at least 24 hours notice of intended entry must be given. Failure to do this may result in an inspection being unauthorised and a trespass.

This power of entry is for the purposes of inspection only – not investigation.

## 3.1. Powers of entry for inspections

- An authorised person may enter any building or land for the purpose of carrying out any inspection [subject to s229(2)] s229(1)
- The authorised person may inspect: s229(1)(a)-(d)
  - the building; or
  - a place of public entertainment; or
  - any equipment, installation, service, records or reports relating to the building or to the place of public entertainment; or
  - building work or plumbing work
- The inspection may be carried out at the following times: s229(2)(a)(i) & (ii)\*
  - For a residence or land where there is a residence,
    - (i) between the hours of 8.00am and 6.00pm; or
    - (ii) at any other time with the written consent of the occupier of the residence or land; s229(2)(b)
  - and
  - For non-residential buildings or land, at a reasonable time
- An authorised person must, before obtaining a consent under subsection (2)(a)(ii), inform the occupier of the residence or land of the purpose of the inspection to be carried out at the residence or land. s229(3)\*

## 3.2. Notice of entry requirements

- Notice must be given to the occupier (if any) of the land or building (of the intention to enter at a particular time) s230\*

\* Please note that these amending provisions although not yet in force at the time of writing are due to come in force. We recommend that they be followed in any event.

- In the case of a residence or the land on which a residence is situated, notice must be provided at least 24 hours prior to the inspection where the entry is carried out between 8.00am and 6pm OR
- Notice can be provided as agreed with the occupier (see below for definition of occupier)
- At least 24 hours notice must also be given in the case of non-residential buildings or land.

**Note:** The notice should be put in writing and either hand-delivered or sent by post in accordance with s236. (See *sample notice in Annexure 2*)

## **Definition: Occupier**

There is no definition of “occupier” in the Act. The Macquarie Dictionary 3<sup>rd</sup> Edition defines an occupier as a person having the legal right to reside, or who is residing, in a house, on land, etc.

Using judicial interpretations, the Encyclopaedic Australian Legal Dictionary defines an occupier of real property as:

- **A person physically using or taking up a place on land. Occupation encompasses a degree of control.**
- **A caretaker, resident, manager, or other person in charge of the land can be an occupier while the employer is not in occupation.**
- **A resident of premises.**
- **A person in charge of premises by reason of office or position.**
- **A person or entity that fills a space.**

**A practical definition may therefore be: an occupier is a person, entity or party with the ability to exercise control over the land and permit or prohibit the entry of other persons for a certain period of time.**

## 4. POWER OF ENTRY FOR THE PURPOSE OF ENFORCEMENT

### Essential Points:

In some circumstances entry to land or a building may be sought to obtain evidence of an offence rather than to merely 'inspect' work. Entry in such circumstances requires either the written consent of the occupier or a search warrant issued by a Magistrate.

Both entry by consent and by search warrant must comply with the requirements of s231 which sets out the prerequisites for entry.

If evidence is obtained in a manner that does not comply with these requirements there is a risk that a Court may determine not to allow the evidence to be given during any hearing.

### 4.1. Prerequisites for entry for the purposes of enforcement under s231

Section 231 sets out certain prerequisites that must be met before an authorised person can enter a building or land and search for evidence. They are:

- **reasonable grounds**
- **suspicion** that there is on
- **building or land**
- **a particular thing** that may be s231(1)
- **evidence** of the commission of
- **an offence against the Act or regulations**

The authorised officer must have evidence of some facts that provide a basis for believing that there is something in the building/land that is evidence of an offence having been committed.

### 4.2. Authority to enter

Even if all these prerequisites exist an authorised officer must not enter a building or land under s231(1) unless he or she has:

- the written consent of the occupier of the building or land s231(2)(a)
- the authority of a search warrant s231(2)(b)



## 5. POWER OF ENTRY FOR ENFORCEMENT – BY CONSENT

Section 231(2)(a) states that unless there is a power of entry under a search warrant, a power of entry for the purposes of enforcement can not take place unless there is written consent from the occupier of the building. The occupier needs to be given a copy of the consent. Where no written consent can be produced to the Court the presumption is that none was given.

### 5.1 The requirements for obtaining consent for entry for the purposes of enforcement

- The consent must be in writing s231(2)(a)
- An occupier who consents in writing to entry and search of his or her building or land must be given a copy of the signed consent s231A(1)
- The copy of the signed consent must be given to the occupier immediately s231A(1)

**Note: The consent form should be in duplicate so the duplicate copy can be provided to the occupier immediately upon signing.**

### 5.2 What happens if no written consent is obtained or cannot be produced

- If a written consent cannot be produced in court then the presumption is that the occupier did not consent to the entry and search s231A(2)
- The presumption can be rebutted if the contrary can be proven. s231A(2)
  - For example, the authorised person may be permitted to give evidence that written consent for entry was obtained but it was lost or mislaid.

The requirement of obtaining written consent to enter the property seeks to avoid a potential problem arising at a later stage as to whether the occupier gave the permission (or consent) to enter. Failure to obtain the requisite permission (or consent) to enter the property could make the inspection unauthorised and possibly a trespass or could result in any evidence obtained being ruled inadmissible.

## 6. POWER OF ENTRY FOR ENFORCEMENT – UNDER SEARCH WARRANT

### Essential points:

A power of entry under s231 may be exercised even if the occupier does not consent, if a search warrant is obtained from a Magistrate. The search warrant will allow entry onto a particular building or land in order to search for a particular thing that it is reasonably believed is on the premises or will be on the premises within 72 hours that may be evidence of an offence against the Act or Regulations. The Magistrate must be satisfied as to this reasonable belief by the production of evidence on oath, whether that be oral or by affidavit. The warrant must include certain information and be issued in accordance with the *Magistrates' Court Act 1989*.

### 6.1. The requirements for applying for a search warrant

The application must be:

- made to a Magistrate
- by an authorised person s231B(1)
- in relation to a particular building or land

The application must be made on the basis that the authorised officer believes on reasonable grounds that there is or may be:

- within the next 72 hours s231B(1)
- on the building or land
- a particular thing
- that may be evidence of
- a commission of an offence against this Act or regulations

### 6.2. On what basis can a Magistrate issue a search warrant under s231B?

- If satisfied by evidence on oath, whether oral or by affidavit s231B(2)
- That there are reasonable grounds s231B(2)
- For suspecting: s231B(2)
  - That there is, or may be;
  - Within the next 72 hours;
  - On a building or land;
  - A particular thing;
  - That may be evidence of the commission of an offence against this Act or regulations.

**Important!** Only evidence of an offence under the Building Act or Regulations is relevant. Section 231B does not permit the obtaining of a search warrant to investigate the breach of an offence under another Act or Regulation.

### 6.3. Evidence provided on oath - What an Affidavit should contain

The affidavit needs to address the matters that the Magistrate needs to satisfy him/herself about prior to issuing a warrant. Consequently it should:

- State that the person applying for the warrant is an authorised person under the Act
- Provide some background information regarding the case and how that background information supports the authorised person's belief that there is evidence as to an offence on the building or land.
- The address of the particular land or building that is to be searched.
- What the particular thing is that is to be searched for.
- The reasons the authorised person has for his or her reasonable belief that this thing can be found on the building or land in question.
- Include any supporting evidence for the reasonable belief such as documentation, interview records, photographs etc.
- Why that thing will be evidence of a breach of the Act or Regulations.
- What offences under the Act or Regulations the occupier of the building or land is likely to have breached.
- If the person under investigation is likely to be uncooperative and the reasons why the authorised person believes this.
- Any reasons for the inspection taking place "at any time" as opposed to "during stated hours". In particular if the premises is a residential property, clear support should be provided for a search that is proposed to take place outside of the hours of 8.00 am and 6.00 pm. For example, if it can be shown that the occupier works during the day and would not be home until after 7.00 pm.
- Arguments for or against why conditions should or should not be attached to the warrant.

## 6.4. The Warrant – What it should contain

The search warrant must:

- Be issued in accordance with the *Magistrates' Court Act 1989* s231B(5) and in the form prescribed under that Act
- The rules that apply to search warrants under the *Magistrates' Court Act 1989* apply. s231B(6)

The warrant itself must state:

- The offence suspected; s231B(4)(a)
- The building or land to be searched; s231B(4)(b)
- A description of the thing for which the search is to be made; s231B(4)(c)
- Any conditions to which the warrant is subject; s231B(4)(d)
- Whether entry is authorised to be made at any time or during stated hours; s231B(4)(e)
- A day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect. s231B(4)(f)

**Note:** The evidence as to matters set out in s231B(1) & (2) can be provided either orally or by affidavit. It is recommended that it be provided by affidavit with a copy of the proposed warrant. It is also recommended that any

**affidavits and/or warrants be prepared by Hoeys Lawyers to ensure accuracy and to prevent any delays.**

## 7. PROCEDURE BEFORE AND UPON ENTRY

### Essential Points:

Unless the authorised person or their assistant has reasonable grounds for believing immediate entry into the building or land is required, the authorised person named in the warrant or their assistant must announce that the warrant authorises them to enter and give the person at the building or land the opportunity to allow entry. The authorised person must identify himself with his or her identity card and provide a copy of the warrant.

### 7.1. Announcements to be made before entry

#### 7.1.1. Who needs to make the announcement?

- The authorised person named in the warrant; or s231C(1)
- A person assisting the authorised person

#### 7.1.2. What must be announced?

- That he or she is authorised by the warrant to enter the building or land; s231C(1)
- They must give any person at the building or land an opportunity to allow entry to the building or land s231C(1)

The purpose behind this section is to allow peaceful entry where possible, although it is implicit that if peaceful entry is not permitted then force can be used to implement the search warrant.

**Note: If force becomes necessary to implement entry under a search warrant the police are to be called to assist.**

#### 7.1.3. Police to assist authorised persons

Under section 233 an authorised person may request the assistance of a member of the police force. A member of the police force may assist the authorised person to take any action authorised by this Division.

## 7.1.4. Exception – Immediate entry

An authorised person or a person assisting the authorised person need not comply with s231C(1): s231C(2)

- If he or she believes
- On reasonable grounds
- That immediate entry to the building or land is required

On what basis?

- To ensure the safety of any person; or s231C(2)(a)
- To ensure the effective execution of the search warrant is not frustrated. s231C(2)(b)

Note that the grounds for immediate entry must be reasonable. Inability to show this may result in an entry being unauthorised and resulting in a trespass.

## 7.2. Information to be provided to occupier of building or land

The authorised person must provide certain information to: s231D

- The occupier, if present; OR
- Another person who apparently represents the occupier, if present.

The authorised person **must**: s231D(a)

- Identify himself or herself by producing his or her identity card for inspection by that person;
- Give a copy of the execution copy of the warrant to that person. s231D(b)

Note the occupier or person who apparently represents the occupier do not need to be present at the building or land when a search warrant is being executed.

Under s228 it is only a person authorised under s228(2) who must be provided with an identity card. We recommended that all persons authorised to execute powers of entry be provided with an identity card. Section 231D makes no distinction between a person authorised by the list in s228(1) and a person authorised in writing under s228(2).

The execution copy of the search warrant is the sealed copy provided by the Court to the authorised person.

**Note: Do not attempt to exercise a power of entry without the authorised person carrying an identity card. Also ensure the execution copy of the warrant has been photocopied and a copy taken to the building or land so that the copy can be given to the occupier or occupier’s representative in the event that the occupier or the occupier’s representative is present.**

## 8. POWERS OF AUTHORISED PERSONS UPON ENTRY

### Essential Points

Authorised persons who legitimately exercise their power of entry can take photos, video recordings, inspect and copy documents, require persons to provide information, documentation and assistance. These powers differ slightly according to whether the power of entry is for the purpose of inspection or enforcement.

A person may refuse to give information, produce a document or assist if by doing so they would incriminate themselves.

#### 8.1. Powers upon entry for the purpose of inspection under s229

Certain powers exist for a person exercising a power of entry for the purpose of carrying out an inspection in accordance with s229. The following criteria must be met:

- Must be an authorised person;
- exercising a power of entry under s229 (i.e. for the purpose of carrying out an inspection).

If the criteria is met the authorised person is allowed the following powers:

- Inspect the building, land, building work or plumbing work
- Take photographs, including video recordings of the building, land, building work or plumbing work s231E(2)
- Make sketches of the building, land, building work or plumbing work
- Exercise the powers set out in s231F (see below) if: s231F(1) & (2)
  - the exercise of such powers are reasonably necessary to determine compliance with the Act or regulations; OR
  - the authorised person has reasonable grounds to believe an offence has been committed under the Act or regulations and needs to determine compliance

## 8.2. Powers upon entry for the purpose of investigation under ss 231 & 231B

Certain powers exist for a person exercising a power of entry for the purpose of carrying out an enforcement in accordance with ss231 and 231B.

The following criteria must be met:

- Must be an authorised person;
- They have exercised a power of entry under s231 or s231B (i.e. by consent or search warrant)
- The thing searched for is found s231E(1)
- During the search

If the criteria is met the authorised person is allowed the following powers:

- To inspect the building or land or thing; s231E(1)(a)
- To take photographs (including video recordings) of the building or land or thing;
- To make sketches of the building or land or thing;
- To inspect the thing if it is document; s231E(1)(b)
- To make copies of the thing if it is a document
- To take extracts from the thing if it is a document
- Exercise the powers set out in s231F (see below) if: s231F(1) & (2)
  - such powers are reasonably necessary to determine compliance with the Act or regulations; OR
  - the authorised person has reasonable grounds to believe an offence has been committed under the Act or regulations and needs to determine compliance

## 8.3. Powers Under the Warrant

Section 231B(5) states that “the search warrant must be issued in accordance with the Magistrates’ Court Act 1989 and in the form prescribed under that Act” and s231B(6) states that “the rules to be observed with respect to search warrants mentioned in the Magistrates’ Court Act 1989 extend and apply to warrants under this section”.

Section 78 of the Magistrates’ Court Act 1989 requires that search warrants include the:

- Power of arrest; and
- The power to seize the document or thing being searched for.

### 8.3.1. Should the power of arrest be exercised?

No.

**Note:** The power of arrest provided under the Warrant is not to be exercised by a Council officer. A procedural defect could result in a claim of false imprisonment and there is no power of imprisonment under the *Building Act*. If the police are assisting with the exercise of the search warrant they may decide to undertake an arrest on grounds other than those in the *Building Act* if warranted.

### 8.3.2. Should the power of seizure be exercised?

Authorised persons are not given powers of seizure under the Division 2 Part 13 of the *Building Act*, however, they are provided in the search warrant. Under the *Building Act* the powers are generally to photograph and copy evidence rather than seizing it. However, in some circumstances seizure may be appropriate. If seizure does occur the item should be taken to a Magistrate immediately who will determine whether or not the items should be returned or retained for prosecution.

**Note:** Legal advice should be obtained prior to seizing items to prevent any civil actions being taken.

## 8.4. Powers of authorised persons to require information or documents under s231F

A person can be required to provide information in two circumstances. The type of information that can be sought in each circumstance differs.

8.4.1. Where an authorised person has: s231F(1)

- Exercised a power of entry; AND
  - Where the exercise of the power under s231F(1) is reasonably necessary to determine compliance with the Act or regulations

- The authorised person can require the further information s231F(1) from a person at the building or land

- The further information he or she can require is: s231F(a) – (c)
  - To give information to the authorised person; and
  - To produce documents to the authorised person; and
  - To give reasonable assistance to the authorised person

- Any documents produced in accordance with this section s231G may be copied or have extracts taken from it.



- 8.4.2. Where an authorised person: s231F(2)
- Has reasonable grounds to believe that an offence has been committed under the Act or regulations;  
AND

- Where the exercise of the power under s231F(1) is reasonably necessary to determine compliance with the Act or regulations

***Note: There is no requirement that a power of entry needs to be exercised***

- The authorised officer can require the information from “a person”. s231F(2)(a)
  - There is no requirement that the person be at the building or land or be an occupier of a building or land.

- The information he or she can require is: s231F(2)(a)-(b)
  - To give information to the authorised person in relation to the carrying out of building work or the work of a building practitioner;;
  - To produce documents to the authorised person relating to building work or the work of a building practitioner;

- The required information or documents must relate to building work or the work of a building practitioner.
- Such a person cannot be required to provide “reasonable assistance” as can be requested under s231F(1)

- Any documents produced in accordance with this section s231G may be copied or have extracts taken from it.

NB: Council has no power to prosecute offences under Part 13. s241

## 9. THE RIGHT TO PROTECTION AGAINST SELF-INCRIMINATION

**Section 231H has adopted the common law principle that an accused person has** a right to remain silent and need not make a statement to a prosecuting body or Court. Where such a person is required to produce documents and answer questions they may refuse to do so if it would incriminate them. Section 231H allows a person to:

- Refuse or fail to produce a document;
- Refuse or fail to provide information;
- Refuse or fail to do any other thing that the person is required to do by or under Division 2

IF the giving of the information, the production of the document or the doing of that other thing would tend to incriminate the person.

A refusal to assist in such a circumstance does not prevent an authorised person from searching for the relevant information or documentation in accordance with a search warrant.

## 10. ENTRY ONTO BUILDING OR LAND IN AN EMERGENCY

An authorised person may enter a building or land without a search s232 warrant at any time if the safety of the public or the occupants is at risk or an emergency order under Part 8 or an emergency plumbing order under section 211AAF applies to the building or land.

Where there is an emergency an authorised person may enter the building or land without a search warrant. A situation may be considered to be an emergency if:

- There is an immediate risk to the safety of the persons or property

If, due to the circumstances of the emergency, there are reasonable grounds to believe that an offence has been committed, then the powers to require further information or documents under s231F could be utilised.

## SUMMARY CHECKLIST

Before exercising a power of entry, quickly run through the following checklist:

### Things to carry with you:

- Identity card
- Authorisation to exercise a power under Part 13, Division 2, s228(2) of the Building Act 1993 (see Annexure 1)
- A copy of the Notice of Entry for inspection (s230) (NB: This should already have been served on the owner/occupier prior to the inspection) (see Annexure 2)
- A copy of the consent (s231) (NB: This will usually be signed by the owner/occupier at the time of the inspection) (see Annexure 3)
- Warrant (if applicable) (see Annexure 4)
- Calling cards (if for some reason the owner/occupier is not home)
- Mobile phone

### Things to have available if needed:

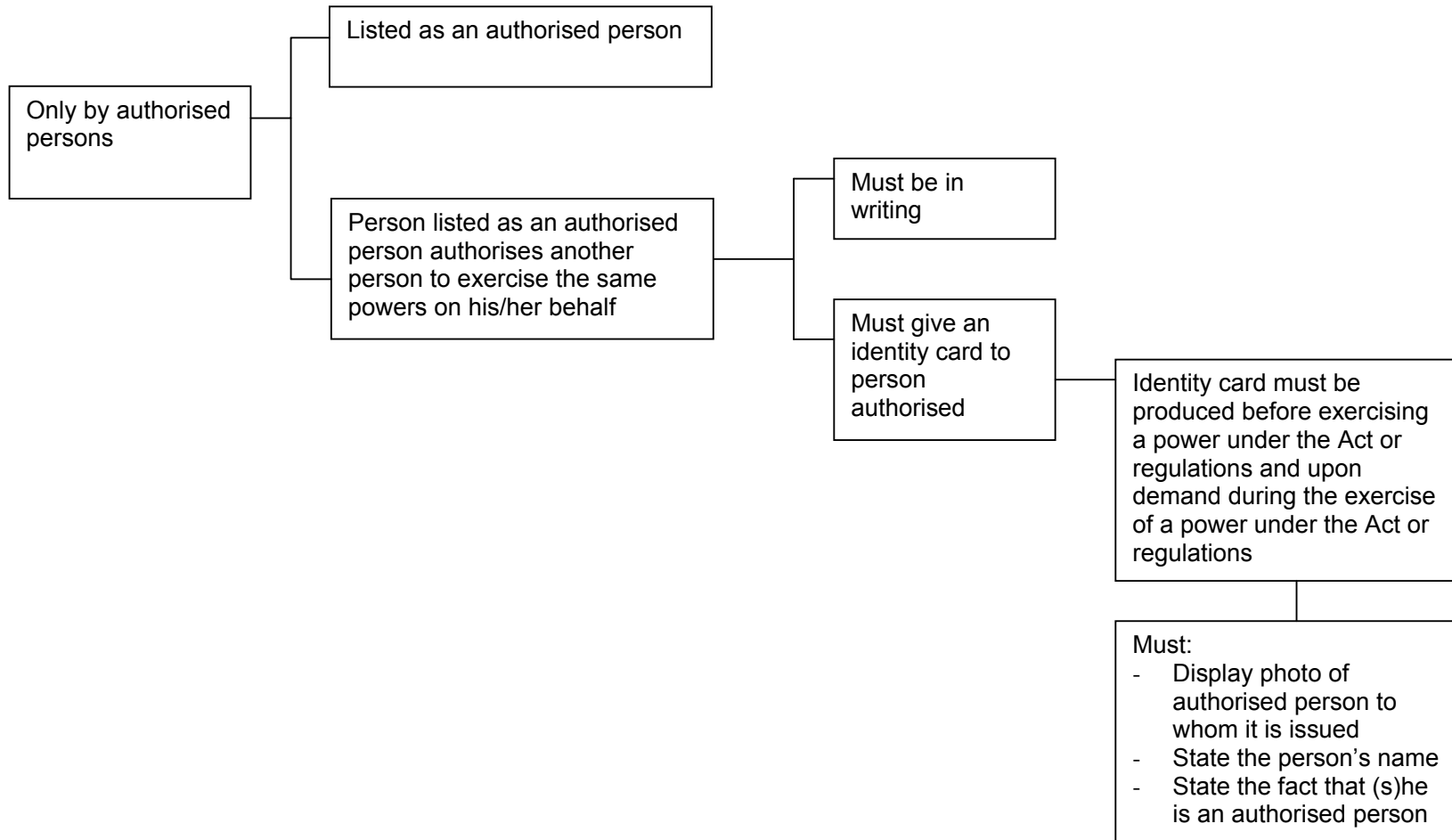
- A police officer
- Another council officer (as a witness or assistant)
- Tools for opening gates or gaining access (but only if the use of force is authorised by the warrant). NB: In such cases it is preferable that the police are called to assist.

### Other items for gathering evidence (depending on the circumstances):

- Camera
- Video camera
- Sketchpad/notepad

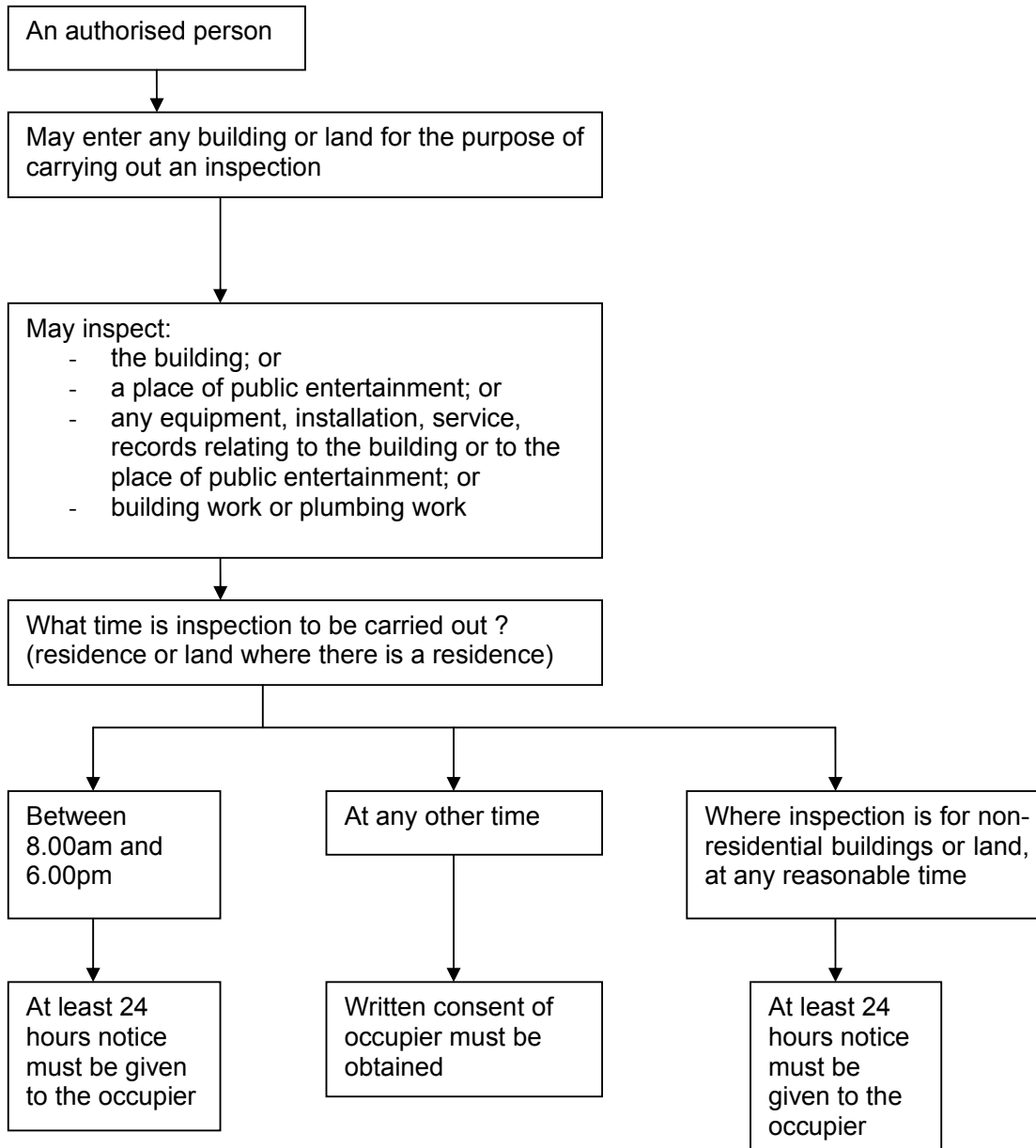
# Notice of Entry Procedures

Flowchart 1 - POWER OF ENTRY



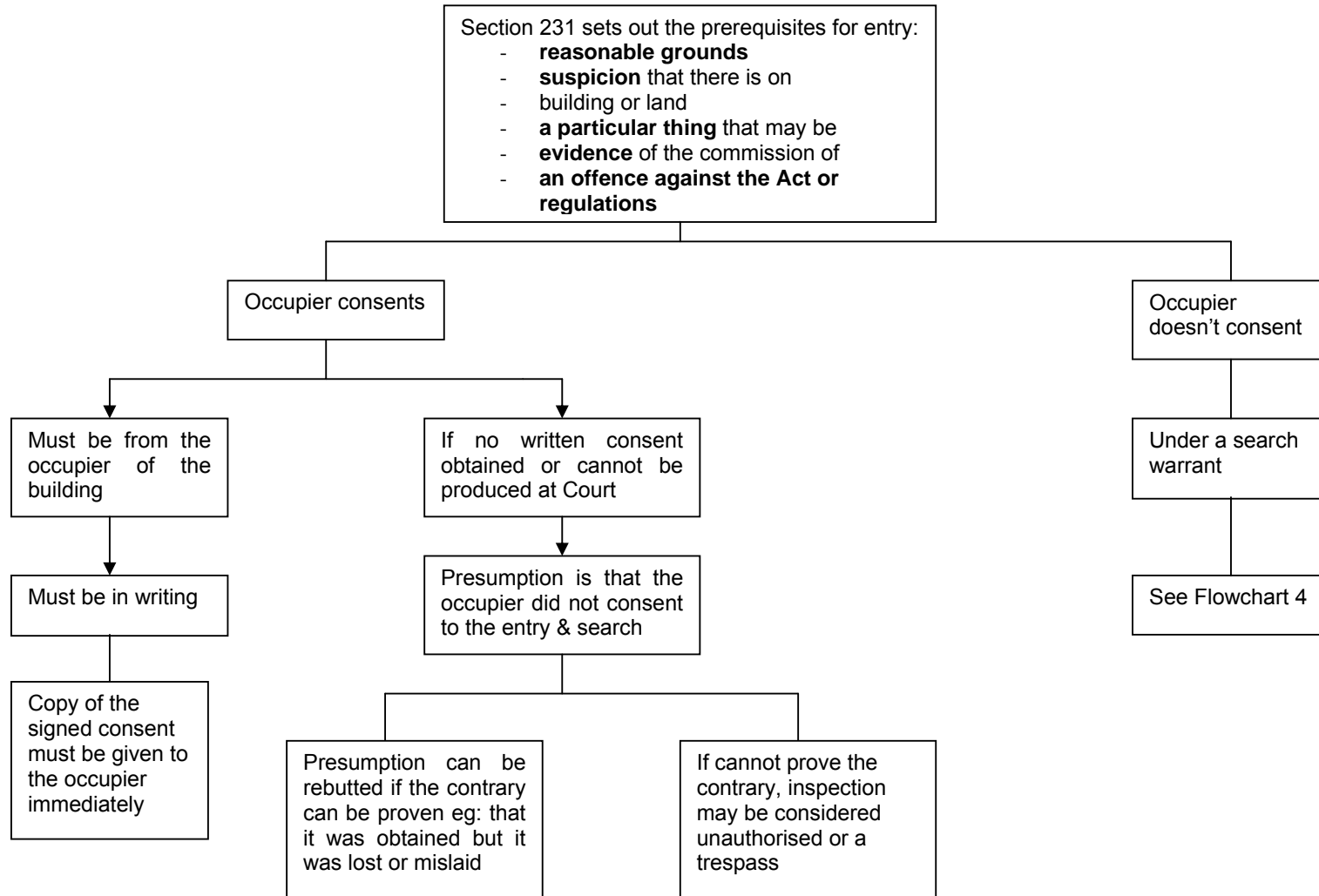
# Notice of Entry Procedures

Flowchart 2 - NOTICE OF ENTRY PROCEDURES FOR THE PURPOSES OF CARRYING OUT AN INSPECTION



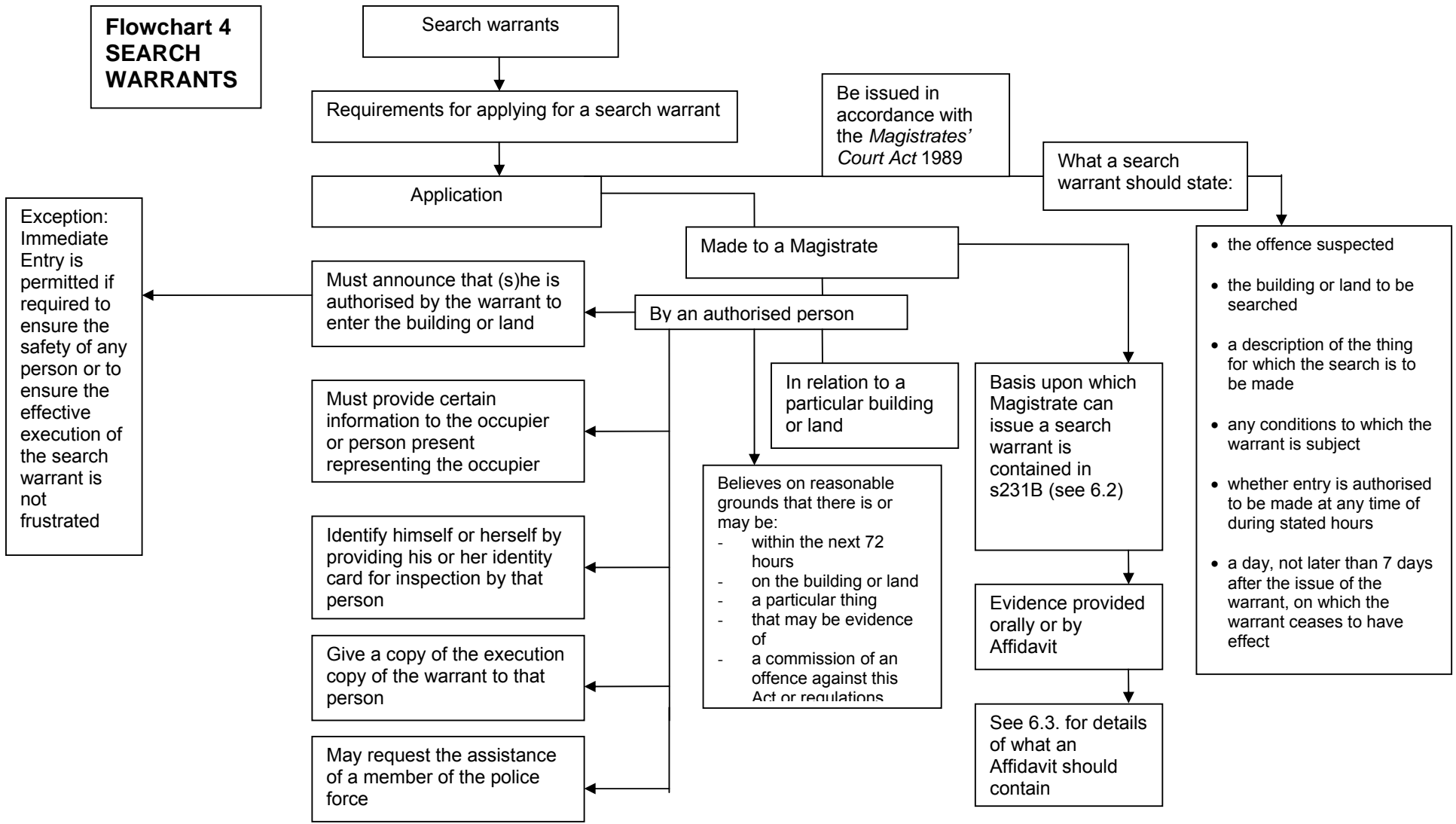
# Notice of Entry Procedures

Flowchart 3 - POWER OF ENTRY FOR THE PURPOSE OF ENFORCEMENT



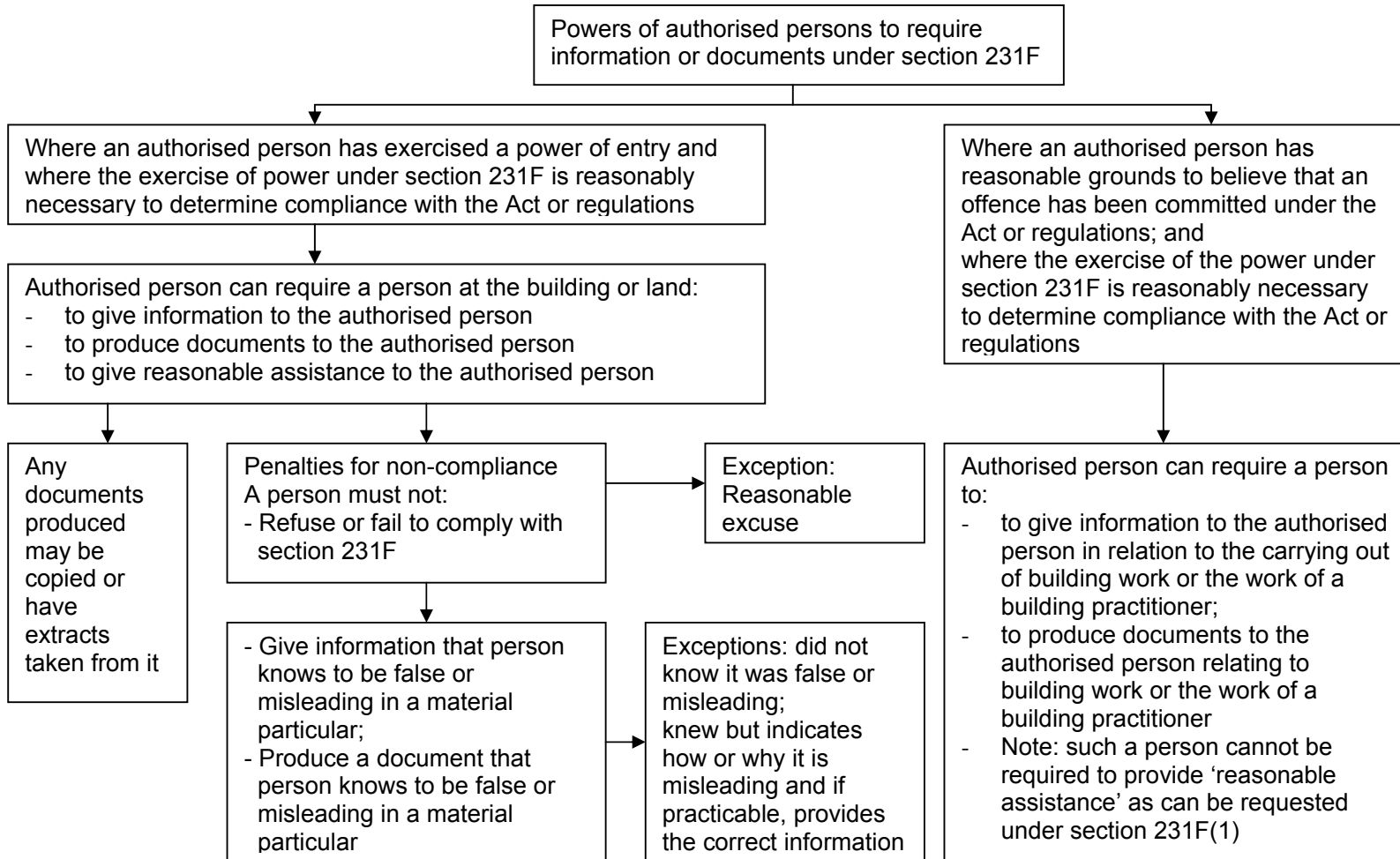
# Notice of Entry Procedures

ERROR! Flowchart 4 - SEARCH WARRANTS



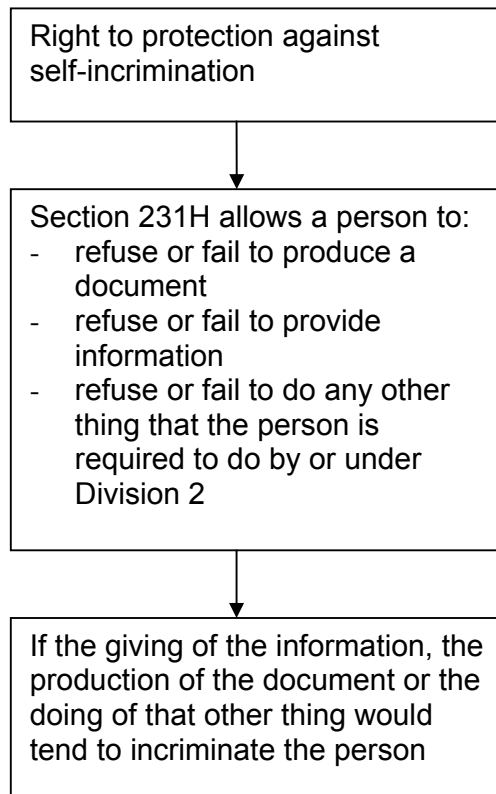
# Notice of Entry Procedures

Flowchart 5 - POWERS OF AUTHORISED PERSONS UPON ENTRY

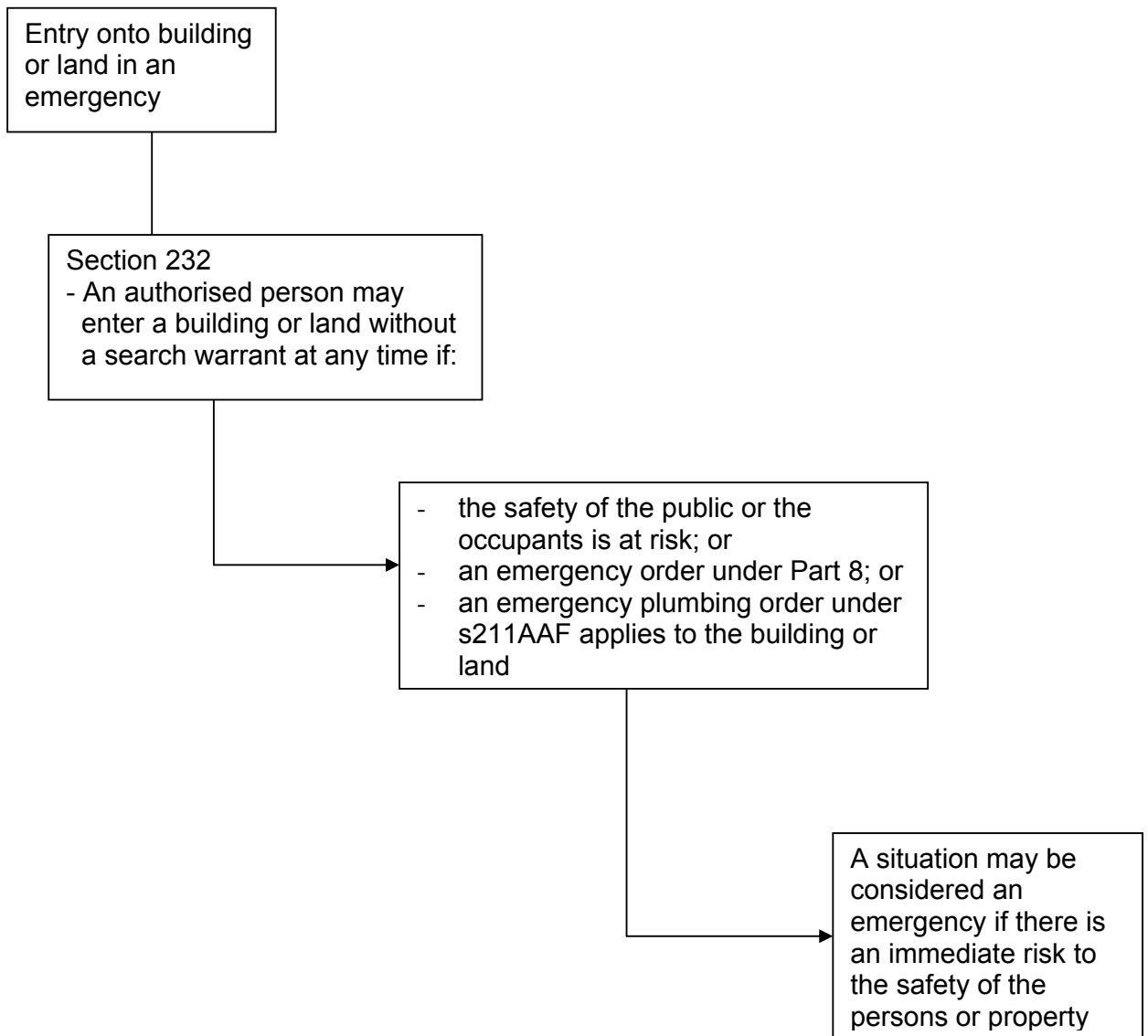




## Flowchart 6 - PROTECTION FROM SELF INCRIMINATION



Flowchart 7 - EMERGENCY ENTRY



## Annexure 1

### Authorisation to exercise a power under Part 13, Division 2 s228(2) of the *Building Act 1993*

**[Insert name of Council]  
The Building Act 1993  
Section 228(2)**

#### **AUTHORISATION TO EXERCISE A POWER UNDER PART 13, DIVISION 2 OF THE BUILDING ACT 1993**

Pursuant to section 228(2) of the *Building Act 1993* (“the Act”) I, [insert name of municipal building surveyor] as the municipal building surveyor of [insert name of Council] (“the Council”) hereby authorise [insert name of person to be authorised] (whose signature appears below) to exercise the powers under Part 13, Division 2 of the Act on my behalf.

This authorisation remains in force until it is withdrawn or [insert name of person to be authorised] ceases to be an employee of the Council.

Date:

.....  
[signature of municipal building surveyor]

[name of municipal building surveyor]

.....  
[signature of authorised person]

[name of authorised person]

## Annexure 2

### Notice of Entry for inspection Part 13, Division 2 s230 of the *Building Act 1993*

BUILDING ACT 1993  
**NOTICE OF ENTRY UNDER SECTION 230**  
**OF THE BUILDING ACT 1993**

TO: THE OCCUPIER  
<Occupier\_Name>  
<Occupier\_Address>

OF THE BUILDING/LAND AT [*insert address of subject land*]

#### WHEREAS

1. I am a person authorised under the *Building Act 1993* to carry out a power of entry for the purpose of carrying out an inspection authorised or required by the Act or regulations.
2. I am a person authorised to cause a notice of entry to be served under Division 2 of Part 13 of the *Building Act 1993* ("the Act").
3. Under the Act I am required to give you, the Occupier of the land/building\*, a minimum of 24 hours notice of an inspection of the land/building\* situated at [*location of land*].

#### NOW THEREFORE TAKE NOTICE THAT

4. I will be inspecting the building/land/place of public entertainment/equipment, installation, service records or reports relating to the building or place of public entertainment\* on the <Inspection\_Date>.

DATED THIS [*insert date*]

Signed by \_\_\_\_\_

[*Name of Authorised person*]  
Authorised person  
[*Name of Council*]  
[*Address of Council*]

\* delete as necessary

## Annexure 3

### Consent to the exercise of the powers of entry under s231 of the *Building Act 1993*

*Council Letterhead  
In Duplicate*

#### **CONSENT TO THE EXERCISE OF POWERS OF ENTRY UNDER SECTION 231 OF THE *BUILDING ACT 1993***

I am the occupier of the building or land located at .....  
[insert address] and described as .....[description of  
premises] (the “building or land”).

In accordance with section 231 of the *Building Act 1993* (the “Act”), I consent to an authorised Officer under that Act exercising a power of entry. I understand and acknowledge that under Division 2, Part 13 of the Act the authorised officer is permitted to enter the building or land and:

1. search for any thing that may be evidence of the commission of an offence against this Act or the *Building Regulations* (the “Regulations”);
2. if the suspected evidence is found, inspect and take photographs (including video recordings), or make sketches, of the building or land or thing;
3. if the suspected evidence is found, inspect, and make copies of, or take extracts from, the thing if it is a document;
4. require any person at the building or land to give information to the authorised person to the extent that it is reasonably necessary to determine compliance with the Act or the Regulations;
5. require any person at the building or land to produce documents to the authorised person to the extent that it is reasonably necessary to determine compliance with the Act or the Regulations;
6. require any person at the building or land to give reasonable assistance to the authorised person to the extent that it is reasonably necessary to determine compliance with the Act or the Regulations;

I understand that, having given consent, refusal or failure to comply with requirements 4 to 6 without reasonable excuse may result in a fine of up to 50 penalty units

Signed by .....  
Occupier of the abovenamed building or land

Name of person signing .....

Date .....

- Copy 1 retained by officer
- Copy 2 given to occupier

## Annexure 4

**Search Warrant drafted in accordance with the Magistrates' Court Act 1989 and in the form prescribed under that Act (Form 15 *Magistrates' Court General Regulations 2000*)**

### Form 15 Search Warrant

Court Ref.

Name and/or description of person or article, thing or material

Place where search will be conducted for article, thing or material

Number and name of street

Suburb

Reason for search/Suspected offence

This Warrant authorises

Name

Agency

and

Address

Or all members of the police force:

---

Search for a person

to break, enter and search any place where the person named or described in this warrant is suspected to be;

and

to arrest the person named or described in this warrant.

---

Search for any article, thing or material of any kind

to break, enter and search any place named or described in this warrant for any article, thing or material of any kind named or described in this warrant;

and

inspect and take photographs (including video recordings), or make sketches of the building, land or the thing;

and

inspect and make copies of, or take extracts from the thing if it is a document;

and

to bring the article, thing or material before the Court so that the matter may be dealt with according to law;

and

to arrest any person apparently having possession, custody or control of the article, thing or material.

---

This warrant is:

