



**COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA
ON THE DRAFT STANDARD OPERATING PROCEDURES FOR THE INVESTIGATION,
SEARCH, ACCESS OR SEIZURE OF ARTICLES IN TERMS OF SECTION 26 OF THE
CYBERCRIMES ACT NO 19 OF 2020**

The Law Society of South Africa (LSSA) constitutes the collective voice of the approximately 30 000 attorneys within the Republic. It brings together the Black Lawyers Association, the National Association of Democratic Lawyers and Independent attorneys, in representing the attorneys' profession in South Africa.

Having considered the Draft Standard Operating Procedures, published for comment in Government Gazette 47021 dated 15 July 2022, the LSSA hereby submits the following comments:

Paragraph 4.1.5 of the Draft Standard Operating Procedures lists several "*principles for digital evidence*". These principles include the principle of *data integrity*, i.e. that no action taken by law enforcement agencies, persons employed within those agencies or their agents should materially change any article which may subsequently be used as evidence in court; the principle of *specialist support*, i.e. that if it is expected that an article may be found in the course of a planned operation, the person in charge of the operation should notify specialists/external advisers in time and to arrange their presence if possible; and the principle of *training and experience*, i.e. that "persons permitted by the CCA to search for, access or seize an article at a crime scene, should have basic training and/or experience to be able to search for, access and seize such articles without compromising the integrity of the evidence (if no specialists are available at the scene)".

The LSSA submits that the word "*basic*" where used in paragraph 4.1.5.4 of the Draft Standard Operating Procedures should be replaced by the word "*adequate*" such that the revised principle would reflect and record that "*persons permitted to search for, access or seize an article at a crime scene, should have adequate training*

and/or experience to be able to search for, access and seize such articles without compromising the integrity of the evidence (if no specialists are available at the scene)".

The LSSA submits further that the all relevant curriculum and assessment frameworks for police officers in South Africa, including the National Certificate: Policing qualification and the Basic Police Learning Programme, should be assessed in light of the above principles expressed in the Draft Standard Operating Procedures and, where necessary, that such curricula and frameworks be updated to ensure that adequate training in how to search for, access and seize such articles without compromising the integrity of the evidence in compliance with the principles of the Draft Standard Operating Procedures can be provided to all relevant members of the South African Police Service. Furthermore, additional short courses in the management of digital devices containing evidence should be offered to all relevant SAPS members who have already completed their formal training prior to the adoption of the Standard Operating Procedures in terms of section 26 of the Cybercrimes Act. This training would, for example, provide police officers with practical training on how to ensure that evidence is not remotely deleted or "wiped" from communications devices that have been seized by police officers and how to ensure that the integrity of information on such devices is preserved for evidence admissibility and evidential weighting purposes.