

1992—No. 527

SEARCH WARRANTS ACT 1985—REGULATION

(Relating to forms)

NEW SOUTH WALES



[Published in Gazette No. 116 of 18 September 1992]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Search Warrants Act 1985, has been pleased to make the Regulation set forth hereunder.

J. P. HANNAFORD,
Attorney General.

Commencement

1. This Regulation commences on 20 September 1992.

Amendment

2. The Search Warrants Regulation 1986 is amended by omitting Schedule 1 and by inserting instead the following Schedule:

SCHEDULE 1—FORMS

Search Warrants Act 1985

Form 1

Application for a Search Warrant

PART 2 APPLICATION (INDICTABLE, FIREARM AND
NARCOTICS OFFENCES, STOLEN PROPERTY, ETC.)

On the day of 19

.....

.....

.....

.....

4. *(To be completed if a previous application for the warrant has been made and refused.)*⁽⁵⁾

The following are details of the refusal of the previous application:

.....

(The following need not be completed if the previous application was made to an authorised justice who was not a Magistrate and this application is made to a Magistrate.)

The additional information which I consider justifies the making of this further application is:

.....

Sworn/declared and affirmed before me on the day
 of 19.....

at
 in the State of New South Wales (Applicant's signature)

Justice of the Peace⁽⁶⁾

-
- (1) Here list items to be searched for. If exact location of items is known, include that information.
 (2) Delete whichever is inapplicable.
 (3) Insert description of offence.
 (4) Insert the reasonable grounds on which the application for the search warrant is based. If space is insufficient use a separate sheet.

- (5) Attach copy of previous application to this form.
- (6) This may be sworn before the authorised justice to whom the application is made for the issue of the warrant. Any alterations, deletions and annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.

NOTE: IT IS AN OFFENCE UNDER SECTION 12B OF THE SEARCH WARRANTS ACT 1985 TO GIVE INFORMATION IN THIS APPLICATION KNOWING IT IS FALSE OR MISLEADING IN A MATERIAL PARTICULAR. THE MAXIMUM PENALTY IS A \$10,000 FINE AND 2 YEARS IMPRISONMENT.

FOR OFFICE USE ONLY

(NOTE: In the case of an application by telephone (but not by facsimile), this form of application should be completed by the authorised justice for record purposes as if it were made in person by the applicant but not on oath.)

Authorised Justice's Record of Application for a Search Warrant

On the day of 19..... ata.m./p.m.

I, the undersigned authorised justice, received this application for a search warrant.

1. ⁽¹⁾The application was made in person.
or
⁽¹⁾The application was made by ⁽¹⁾facsimile transmission/telephone and I was/was not⁽¹⁾ satisfied that the warrant was required urgently and it was/was not⁽¹⁾ practicable for the application to be made in person.
2. On considering the application I found/did not find⁽¹⁾ that there were reasonable grounds for issuing the warrant.

(If warrant is issued—continue)

3. The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows:⁽²⁾

.....
.....
.....

-

4. *(To be completed if the warrant may be executed by night.)* The grounds on which I relied to justify the execution of the warrant by night are as follows:
- (a) ⁽¹⁾execution of the warrant by day is unlikely to be successful;
 - (b) ⁽¹⁾there is likely to be less risk to the safety of any person;
 - (c) ⁽¹⁾an occupier is likely to be on the premises only at night to allow entry without the use of force;
 - (d) ⁽¹⁾.....

5. The search warrant was issued at a.m./p.m. on
 the day of 19.....

Signed
 (Authorised Justice)⁽³⁾

- (1) Delete whichever is inapplicable.
- (2) Either identify in the application the relevant particulars of the grounds or specify them. If space insufficient continue overleaf or attach separate sheet.
- (3) Return this form, together with a copy of the warrant and a copy of the occupier's notice to the Local Court named in the occupier's notice.

NOTE: If the time for expiry of the warrant is subsequently extended under section 20 of the Search Warrants Act 1985, the authorised justice should note that fact on this form.

*Search Warrants Act 1985***Form 2****Application for a Search Warrant**APPLICATION (OTHER THAN PART 2 SEARCH WARRANT)⁽¹⁾

On the day of 19.....

I, , being a person with authority to
(*name*)

apply for a search warrant under section of the
..... Act⁽²⁾ apply for a search warrant
to enter the premises known as

(*address*)

in the State of New South Wales, being a

(*description of premises; e.g. dwelling house*)

I swear/solemnly, sincerely and truly declare and affirm that:

1. ⁽³⁾ (a) I am an authorised officer/inspector/authorised person/
employed by the

⁽³⁾ or (b) I am a member of the Police Force of New South Wales
of the rank of
stationed at

⁽³⁾ or (c) I am ⁽⁴⁾

2. I have reasonable grounds for believing the following matters
which justify this application for the issue of a search warrant: ⁽⁵⁾

.....
.....
.....
.....
.....
.....
.....

.....

.....

.....

.....

Sworn/declared and affirmed before me on the day
 of 19.....
 at
 in the State of New South Wales (Applicant's signature)

Justice of the Peace⁽⁸⁾

-
- (1) This Form is to be used for all warrants (except Part 2 search warrants). An application for a Part 2 search warrant (firearms, narcotics, indictable offences and stolen goods) should not be on this form but should be on Form 1.
 - (2) Insert the section and Act under which the search warrant is sought.
 - (3) Delete whichever is inapplicable.
 - (4) Where (a) and (b) are not applicable to describe the person authorised to seek a search warrant use (c) and describe the person seeking the warrant and any authority required.
 - (5) Here include all those matters which justify a search warrant to enter the named premises. If an offence or breach of an Act or Regulation is alleged specify the particular offence. If the experience of the applicant or source of the information is relevant then include this in the grounds. If space is insufficient attach a separate sheet.
 - (6) Here include the powers which the applicant seeks to exercise on entry. If any items are to be seized they should be specified. If the exact location of these items is known, include that information. General powers which are given under the Statute authorising the issue of the search warrant should be included where relevant.
 - (7) Attach copy of previous application to this form.
 - (8) This application may be sworn before the authorised justice to whom the application is made for the issue of the warrant.

NOTE: IT IS AN OFFENCE UNDER SECTION 12B OF THE SEARCH WARRANTS ACT 1985 TO GIVE INFORMATION IN THIS APPLICATION KNOWING IT IS FALSE OR MISLEADING IN A MATERIAL PARTICULAR THE MAXIMUM PENALTY IS A \$10,000 FINE AND 2 YEARS IMPRISONMENT.

FOR OFFICE USE ONLY

(NOTE: In the case of an application by telephone (but not by facsimile), this form of application should be completed by the authorised justice for record purposes as if it were made in person by the applicant but not on oath.)

Authorised Justice's Record of Application for a Search Warrant

On the day of 19..... ata.m./p.m.

I, the undersigned authorised justice, received this application for a search warrant.

1. ⁽¹⁾The application was made in person.

or

⁽¹⁾The application was made by facsimile transmission/telephone⁽¹⁾ and I was/was not⁽¹⁾ satisfied that the warrant was required urgently and it was/was not⁽¹⁾ practicable for the application to be made in person.

2. On considering the application I found/did not find⁽¹⁾ that there were reasonable grounds for issuing the warrant.

(If warrant is issue—continue)

3. The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows:⁽²⁾

.....

4. *(To be completed if the warrant may be executed by night.)* The grounds on which I relied to justify the execution of the warrant by night are as follows:

- (a) ⁽¹⁾execution of the warrant by day is unlikely to be successful;

- (b) ⁽¹⁾there is likely to be less risk to the safety of any person;
- (c) ⁽¹⁾the occupier is likely to be on the premises only at night to allow entry without the use of force;
- (d) ⁽¹⁾.....
5. The search warrant was issued ata.m./p.m. on the day of 19.....

Signed
(Authorised Justice)⁽³⁾

- (1) Delete whichever is inapplicable.
- (2) Either identify in the application the relevant particulars of the grounds or specify them. If space insufficient continue overleaf or attach separate sheet.
- (3) Return this form, together with a copy of the warrant and a copy of the occupier's notice to the Local Court named in the occupier's notice.

NOTE: If the time for expiry of the warrant is subsequently extended under section 20 of the Search Warrants Act 1985, the authorised justice should note that fact on this form.

Search Warrants Act 1985

Form 3

SEARCH WARRANT

(PART 2 WARRANT)

This search warrant expires ata.m./p.m. on the day of , 19..... and must not be used after that time.

NOTE: If no time for expiry is specified above, the warrant expires 72 hours after the time it was issued or, in the case of a telephone warrant, 24 hours after the time it was issued.

On the day of 19.....,

.....
(*name of authorised justice*)

a justice authorised and empowered to issue search warrants under Part 2 of the Search Warrants Act 1985, granted this search warrant authorising

..... of
(*name*) (*rank*) (*place of work*)

(the applicant) a member of the Police Force of New South Wales and all other members of the Police Force of New South Wales:

1. To enter between the hours of 6.00a.m. and 9.00p.m.
..... (1) the premises known as
.....
(*address*)

being a
(*description of premises; e.g. dwelling house*)

and

2. There to search for the following things:⁽²⁾

.....
.....
.....

In executing this search warrant the applicant may exercise the powers provided by the Search Warrants Act 1985. These include the power to:

- (a) Enter the named premises.
- (b) Search for the things mentioned in this warrant.
- (c) Use any persons necessary to assist in the search.
- (d) Use any force that is reasonably necessary to enter the premises and to open any receptacle on those premises for the purposes of the search.
- (e) Search any persons on the premises who are reasonably suspected of having on them a thing mentioned in this warrant.
- (f) Arrest any persons found on the premises whom a member of the police force reasonably suspects of having committed an offence in relation to a thing seized pursuant to this warrant.

NOTE: If no time for expiry is specified above, the warrant expires 72 hours after the time it was issued or, in the case of a telephone warrant 24 hours after the time it was issued.

On the day of, 19.....,

.....
(*name of authorised justice*)

a justice authorised and empowered to issue search warrants under
section of the Act
granted this search warrant authorising
(*name*)

..... of, the applicant
(*designation, etc.*)

.....
and⁽²⁾

1. To enter between the hours of 6.00 a.m. and 9.00 p.m.
.....⁽³⁾ the premises known as
.....
(*address*)

.....
and being a⁽⁴⁾
(*description of premises; e.g. dwelling house*)

and

2. There to⁽⁵⁾
.....
.....
.....
.....
.....

In executing this search warrant the applicant may exercise the powers
provided by the Search Warrants Act 1985 and the above Act. These
include the power to:

- (a) Enter the named premises.
- (b) Use any persons necessary to assist in the execution of this
warrant.
- (c) Use any force that is reasonably necessary to enter the premises
and to open any receptacle on the premises for the purposes of the
search.

(d) ⁽⁶⁾.....

Signed by me

.....
 (Print name)⁽⁷⁾ (Signature)
 Date 19.....

-
- (1) Insert the appropriate Act and section under which the warrant is issued.
 - (2) Add any additional necessary person (e.g. police officer) who is required to accompany applicant.
 - (3) If there is need for execution by night specify the other times.
 - (4) Note any restriction under the enabling Act on the category of places that can be entered.
 - (5) Here specify the type of search or inquiry to be performed on entry. Functions on entry must be within those authorised by the enabling Act. Specify with particularity anything to be seized.
 - (6) Here specify (if relevant) any special additional powers of personal search, seizure, arrest, inspection, etc., provided under the enabling Act.
 - (7) Where the application is made in person or by facsimile transmission the authorised justice should sign and date the warrant and initial any corrections. In the case of a telephone search warrant in circumstances where facsimile facilities are not available, the justice should use this form as a copy of the terms of the warrant and the applicant should complete the warrant in the terms dictated by the justice and then sign and date the warrant.

NOTE: The applicant must deliver this search warrant when reporting to the issuing justice within 10 days after the execution of the warrant, or if not executed, within 10 days after the expiry of the warrant.

*Search Warrants Act 1985***Form 5**

(OCCUPIER'S NOTICE FOR A PART 2 WARRANT)

IMPORTANT INFORMATION FOR OCCUPIERS CONCERNING
THE SEARCH WARRANT

A search warrant has been issued by an authorised justice. It gives the authority and power to the police to enter and search the premises at

.....
(address)

being a
(description of premises; e.g. dwelling house)

Expiry

The search warrant will expire ata.m./p.m. on
..... the 19.....
(day) (date) (month) (year)

Force

The police may use such force as is reasonably necessary to enter and search the premises and to gain entry to or open any receptacle.

YOU HAVE THE RIGHT TO INSPECT THE SEARCH WARRANT BUT YOU MUST NOT HINDER OR OBSTRUCT THE SEARCH, AS TO DO SO MAY BE A CRIMINAL OFFENCE. UNDER SECTION 9 OF THE SEARCH WARRANTS ACT 1985, THE MAXIMUM PENALTY FOR OBSTRUCTING OR HINDERING A SEARCH WITHOUT REASONABLE EXCUSE IS A \$10,000 FINE AND 2 YEARS IMPRISONMENT.

The things the police are empowered to search for are:⁽¹⁾

.....
.....

The policy can seize any of the things mentioned in the warrant and anything which they find, while executing the search warrant, which is believed on reasonable grounds to be connected with any offence.

As well as the powers mentioned, the police may:

- (a) Guard or take away anything seized under the warrant.
- (b) Search any persons on the premises who are reasonably suspected of having a thing on them which is mentioned in the warrant.
- (c) Arrest any person who is reasonably suspected of committing an offence in relation to anything seized.

The following details are provided for your information:

The search warrant was granted by an authorised
justice under the Search Warrants Act 1985 on
at
(time) (date)

The warrant was issued on the application of
(name)
 of
(rank) (place of work)

The warrant was granted on the basis that the authorised justice found that there were reasonable grounds for the issue of the warrant and, in particular, that the applicant police officer had reasonable grounds to believe that there were on the premises the things listed above which were:

- (1) Things connected with the following offence of

 or
 (2) Things stolen or otherwise unlawfully obtained.

Challenging the issue of the Warrant or the conduct of the Search

If you are dissatisfied with the issue of the warrant or the conduct of the search you should seek legal advice. This advice may assist you to decide whether your rights have been infringed and what action you can take. If your rights have been infringed you may be entitled to a legal remedy.

You should keep this notice as it will assist you if you seek advice.

You should produce this notice at the court when seeking to inspect the application.

Limitations on the powers conferred

1. The warrant must be executed before the date and time of expiry given above.
2. Any force used must be reasonably necessary.
3. The warrant authorises entry only between the hours of 6.00a.m. and 9.00p.m. unless other times are specified on the warrant.
4. The warrant must be shown to you if you ask to see it.
5. Nothing other than the things mentioned in the warrant can be seized unless it was found by a police officer while executing the search and the officer believes on reasonable grounds that it is connected with any offence.

Inspection

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at ⁽³⁾
..... Local Court. You may inspect those documents by arrangement with that Court.

Signed Date
(Authorised Justice/Applicant Officer)⁽⁴⁾

- (1) If space insufficient attach separate sheet.
- (2) Delete whichever is inapplicable.
- (3) Insert here the Local Court to which the issuing justice is attached or to which it is intended to forward the documentation.
- (4) In the case of telephone search warrants in circumstances where facsimile facilities are not available, the notice must be signed by the applicant officer. In cases of application in person or by facsimile transmission, the authorised justice should sign the notice.

*Search Warrants Act 1985***Form 6****(OCCUPIER'S NOTICE OTHER THAN FOR A PART 2
WARRANT)****IMPORTANT INFORMATION FOR OCCUPIERS CONCERNING
THE SEARCH WARRANT**

A search warrant has been issued by an authorised justice. It gives the authority and power to the persons named in the search warrant to enter and search the premises at

..... being a
(address)

.....
(description of premises; e.g. dwelling house)

Expiry

The search warrant will expire ata.m./p.m. on

..... the 19.....
(day) (date) (month) (year)

Force

The persons granted the power to enter under the warrant may use such force as is reasonably necessary to gain entry to the premises and to carry out the purposes of the warrant.

YOU HAVE THE RIGHT TO INSPECT THE SEARCH WARRANT BUT YOU MUST NOT HINDER OR OBSTRUCT THE PERSONS EXECUTING IT, AS TO DO SO MAY BE A CRIMINAL OFFENCE. UNDER SECTION 9 OF THE SEARCH WARRANTS ACT 1985, THE MAXIMUM PENALTY FOR OBSTRUCTING OR HINDERING A SEARCH WITHOUT REASONABLE EXCUSE IS A \$10,000 FINE AND 2 YEARS IMPRISONMENT.

The powers given by the search warrant

The search warrant gives the power to the persons executing it to:

- (a) Enter the named premises.
- (b) Search for/inspect the following things:⁽¹⁾
-
-
-
-

- If you are dissatisfied with the issue of the warrant or the conduct of the people executing the warrant you should seek legal advice. This advice may assist you to decide whether your rights have been infringed and what action you can take. If your rights have been infringed you may be entitled to a legal remedy.

You should keep this notice as it will assist you if you seek advice.

You should produce this notice at the court when seeking to inspect the application.

Limitations on the powers conferred

1. The warrant must be executed before the date and time of expiry given above.
2. Any force used must be reasonably necessary.
3. The warrant authorises entry only between the hours of 6.00 a.m. and 9.00 p.m. unless other times are specified on the warrant.
4. The warrant must be shown to you if you ask to see it.
5. Only functions and powers authorised under the warrant or by the Act authorising the issue of the warrant may be performed.

Inspection

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at ⁽⁶⁾
..... Local Court. You may inspect those documents by arrangement with that Court.

Signed Date.....
(Authorised Justice/Applicant Officer)⁽⁷⁾

(1) Here list the items to be searched for.

(2) List the powers and functions that are specified in the Act authorising the issue of a search warrant specifically required by the applicant.

(3) Insert appropriate Act.

(4) Insert name, address, title (e.g. inspector) and the organisation to which applicant belongs.

(5) Here insert in summary form the grounds on which the search warrant was issued.

(6) Insert here the Local Court to which the issuing justice is attached or to which it is intended to forward the documentation.

(7) In the case of telephone search warrants in circumstances where facsimile facilities are not available, the notice must be signed by the applicant officer. In cases of application in person or by facsimile transmission, the authorised justice should sign the notice

*Search Warrants Act 1985***Form 7**REPORT TO AUTHORISED JUSTICE ON THE EXECUTION
OF A SEARCH WARRANT⁽¹⁾

This report is made to the authorised justice, who issued the attached search warrant.⁽²⁾

If the Warrant was not executed

1. The warrant was not executed because of the following reasons:

.....

(If the Warrant was executed continue)

2. The warrant was executed on
 ata.m./p.m. the day of 19.....

3. The result of the execution of the warrant (including a description of the things seized) is briefly as follows:⁽³⁾

.....

4. The things seized are now in the custody of ⁽⁴⁾

5. The occupier's notice was not served/served on ⁽⁵⁾

.....

Signed Date Name

Rank or Designation

Place of Work

Date of Receipt of Report by Authorised Justice 19.....

Signed
(Authorised Justice)

-
- (1) This report must be made within 10 days after the execution of the warrant or the expiry of the warrant, whichever first occurs.
 - (2) Unless completed on the back of the warrant, attach the original warrant issued by the authorised justice or telephone search warrant completed by the applicant.
 - (3) If receipt is given for anything seized, attach copy.
 - (4) Specify the person who has responsibility for the safekeeping of the things seized. Unless the security of the things seized is thereby endangered, specify the place where they are held.
 - (5) Specify manner of service and on whom notice was served.

NOTE: On completion of the Report, forward the Report and attachments to the Local Court named in the Occupier's Notice.

EXPLANATORY NOTE

The object of this Regulation is to update the forms prescribed under the Search Warrants Act 1985 for applications for search warrants, search warrants, notices to occupiers and reports on the execution of search warrants as a consequence of the amendment of that Act by the Search Warrants (Amendment) Act 1991.

The 1991 amendments:

- enable certain search warrant applications to be made 72 hours in advance of the time when they will be required;
 - require certain information to be provided in applications for search warrants;
 - require additional information to justify the making of a further application for a search warrant in certain circumstances in which an application has already been refused;
 - change the expiry times of search warrants;
 - create an offence of giving false or misleading information in connection with an application for a search warrant.
-