

SEARCH WARRANTS ACT, 1985, No. 37

NEW SOUTH WALES.



TABLE OF PROVISIONS.

PART I.—PRELIMINARY.

1. Short title.
2. Commencement.
3. Interpretation.

PART II.—SEARCH WARRANTS IN RESPECT OF INDICTABLE, FIREARMS AND NARCOTICS OFFENCES, STOLEN PROPERTY, ETC.

4. Interpretation—things connected with offence, etc.
5. Application for warrant in respect of certain offences, stolen property, etc.
6. Issue of warrant.
7. Seizure of things pursuant to warrant.
8. Search and arrest of persons pursuant to warrant.
9. Obstruction, etc., of person executing warrant.

PART III.—PROVISIONS RELATING TO SEARCH WARRANTS UNDER PART II AND CERTAIN OTHER ACTS.

10. Interpretation.
11. Application for warrant.
12. Telephone search warrant.
13. Record of proceedings before authorised justice.
14. Form of warrant.
15. Notice to occupier of premises entered pursuant to warrant.

16. Duty to show warrant.
17. Use of force to enter premises, etc.
18. Use of assistants to execute warrant.
19. Execution of warrant by day or night.
20. Expiry of warrant.
21. Report to authorised justice on execution of warrant, etc.
22. Death, absence, etc., of authorised justice who issued warrant.
23. Defects in warrants.

PART IV.—MISCELLANEOUS.

24. Abolition of common law search warrants.
 25. Proceedings for offences.
 26. Regulations.
-

SEARCH WARRANTS ACT, 1985, No. 37

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 37, 1985.

An Act to provide for the issue of search warrants in respect of indictable and certain other offences; to make provision in connection with those search warrants and search warrants under other Acts; and for other purposes.

[Assented to, 26th April, 1985.]

See also Miscellaneous Acts (Search Warrants) Amendment Act, 1985.

Search Warrants 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.**PRELIMINARY.****Short title.**

1. This Act may be cited as the "Search Warrants Act, 1985".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Interpretation.

3. In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"authorised justice" means—

- (a) a Magistrate; or
- (b) a justice of the peace employed in Local Courts Administration, Attorney General's Department;

"occupier", in relation to any premises, includes a person in charge of the premises;

Search Warrants 1985

“premises” includes any structure, building, aircraft, vehicle, vessel and place (whether built upon or not), and any part thereof.

PART II.**SEARCH WARRANTS IN RESPECT OF INDICTABLE, FIREARMS AND
NARCOTICS OFFENCES, STOLEN PROPERTY, ETC.****Interpretation—things connected with offence, etc.**

4. (1) For the purposes of this Part, a thing is connected with a particular offence if it is—

- (a) a thing with respect to which the offence has been committed;
- (b) a thing that will afford evidence of the commission of the offence;
or
- (c) a thing that was used, or is intended to be used, for the purpose of committing the offence.

(2) A reference in this Part to an offence includes a reference to an offence that there are reasonable grounds for believing has been, or is to be, committed.

Application for warrant in respect of certain offences, stolen property, etc.

5. (1) A member of the police force may apply to an authorised justice for a search warrant if the member of the police force has reasonable grounds for believing that there is in or on any premises—

- (a) a thing connected with a particular indictable offence;
- (b) a thing connected with a particular firearms offence;
- (c) a thing connected with a particular narcotics offence; or
- (d) a thing stolen or otherwise unlawfully obtained.

Search Warrants 1985

(2) In subsection (1)—

“firearms offence” means an offence under the Firearms and Dangerous Weapons Act, 1973, or the regulations thereunder, being an offence committed in respect of a firearm or other dangerous article within the meaning of section 75 of that Act;

“indictable offence” includes—

- (a) any act or omission which if done, or omitted to be done, in New South Wales would constitute an offence punishable on indictment; and
- (b) an offence punishable on indictment but which may be heard and determined in a summary manner;

“narcotics offence” means an offence under the Poisons Act, 1966, or the regulations thereunder, being an offence committed in respect of—

- (a) a restricted substance prescribed for the purposes of section 16 of that Act; or
- (b) a drug of addiction, prohibited drug or prohibited plant within the meaning of that Act.

Issue of warrant.

6. An authorised justice to whom an application is made under section 5 (1) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any member of the police force—

- (a) to enter the premises; and
- (b) to search the premises for things of the kind referred to in section 5 (1).

Search Warrants 1985

Seizure of things pursuant to warrant.

7. (1) A member of the police force executing a search warrant issued under this Part—

- (a) may seize a thing mentioned in the warrant; and
- (b) may, in addition, seize any other thing—
 - (i) that the member of the police force finds in the course of executing the warrant; and
 - (ii) that the member of the police force has reasonable grounds for believing is connected with any offence.

(2) The power conferred by subsection (1) to seize a thing includes—

- (a) a power to remove the thing from the premises where it is found; and
- (b) a power to guard the thing in or on those premises.

(3) After it has been produced in evidence, or when it is not required as evidence, a thing seized pursuant to this section shall be disposed of as a court or Magistrate may direct.

Search and arrest of persons pursuant to warrant.

8. A member of the police force executing a search warrant issued under this Part—

- (a) may search a person found in or on the premises whom the member of the police force reasonably suspects of having a thing mentioned in the warrant; and
- (b) may arrest and bring before a justice of the peace any person found in or on the premises whom the member of the police force reasonably suspects of having committed an offence in respect of a thing seized pursuant to section 7.

Search Warrants 1985

Obstruction, etc., of person executing warrant.

9. A person shall not, without reasonable excuse, obstruct or hinder a person executing a search warrant issued under this Part.

Penalty: \$2,000 or imprisonment for 2 years, or both.

PART III.**PROVISIONS RELATING TO SEARCH WARRANTS UNDER PART II
AND CERTAIN OTHER ACTS.****Interpretation.**

10. In this Part—

“occupier’s notice” means an occupier’s notice referred to in section 15;

“search warrant” means a search warrant issued under any of the following provisions:—

Part II of this Act;

section 22 of the Canned Fruits Marketing Act, 1979;

section 145 of the Child Welfare Act, 1939;

section 295 of the Community Welfare Act, 1982;

section 104 of the Dairy Industry Act, 1979;

section 42 of the Dangerous Goods Act, 1975;

section 25 of the Dental Technicians Registration Act, 1975;

section 5 of the Dentists Act, 1934;

section 13 of the Disorderly Houses Act, 1943;

section 52 or 53 of the Egg Industry Act, 1983;

section 211 of the Electricity Development Act, 1945;

section 46 of the Environmentally Hazardous Chemicals Act, 1985;

section 39 of the Film and Video Tape Classification Act, 1984;

section 20G of the Fisheries and Oyster Farms Act, 1935;

Search Warrants 1985

section 22 or 40 of the Gaming and Betting Act, 1912;
section 7 of the Indecent Articles and Classified Publications Act, 1975;
section 151 or 151A of the Liquor Act, 1982;
section 138 of the Marketing of Primary Products Act, 1983;
section 39AA of the Medical Practitioners Act, 1938;
section 164 of the National Parks and Wildlife Act, 1974;
section 72 of the Pesticides Act, 1978;
section 18 of the Physiotherapists Registration Act, 1945;
section 27 of the Prevention of Cruelty to Animals Act, 1979;
section 9 of the Prostitution Act, 1979;
section 96A of the Public Health Act, 1902;
section 22 of the Pure Food Act, 1908;
section 27 of the Wheat Marketing Act, 1984;
any other provision of, or made under, an Act, being a provision which provides that this Part applies to a search warrant issued under that provision;

“telephone search warrant” means a search warrant referred to in section 12.

Application for warrant.

11. (1) An application for a search warrant shall be made in writing.
- (2) An authorised justice shall not issue a search warrant unless—
 - (a) the application for the warrant sets out the grounds on which the warrant is being sought;
 - (b) the applicant has given the authorised justice, either orally or in writing, such further information (if any) as the authorised justice requires concerning the grounds on which the warrant is being sought; and
 - (c) the information given by the applicant is verified before the authorised justice on oath or affirmation or by affidavit.

Search Warrants 1985

(3) An authorised justice may administer an oath or affirmation or take an affidavit for the purposes of an application for a search warrant.

(4) This section does not apply to a telephone search warrant.

Telephone search warrant.

12. (1) In this section, "telephone" includes radio, telex and any other communication device.

(2) A person may make application by telephone for a search warrant.

(3) An authorised justice shall not issue a search warrant upon an application made by telephone unless the authorised justice is satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person.

(4) If it is not practicable for an application for a search warrant to be made by telephone directly to an authorised justice, the application may be transmitted to the authorised justice by another person on behalf of the applicant.

(5) An authorised justice who issues a search warrant upon an application made by telephone shall—

- (a) complete and sign the warrant;
- (b) inform the person who made the application of the terms of the warrant and of the date and the time when it was signed; and
- (c) prepare and furnish an occupier's notice to the person who made the application or inform that person of the terms of an occupier's notice.

(6) Where a search warrant is issued upon an application made by telephone, the applicant—

- (a) shall complete a form of search warrant in the terms indicated by the authorised justice under subsection (5) and write on it the name of that authorised justice and the date and the time when the warrant was signed; and

Search Warrants 1985

- (b) where the applicant was not furnished with an occupier's notice— shall complete a form of occupier's notice in the terms indicated by the authorised justice under subsection (5).

(7) A form of search warrant and a form of occupier's notice completed in accordance with subsection (6) shall be deemed to be a search warrant issued, and an occupier's notice prepared and furnished, in accordance with this Act.

Record of proceedings before authorised justice.

13. (1) An authorised justice who issues a search warrant shall cause a record to be made of all relevant particulars of the grounds the authorised justice has relied on to justify the issue of the warrant.

(2) The regulations may make provision for or with respect to—

- (a) the keeping of records in connection with the issue and execution of search warrants;
- (b) the inspection of any such records; and
- (c) any other matter in connection with any such records.

(3) Any matter that might disclose the identity of a person shall not be recorded pursuant to this section if the authorised justice is satisfied that the safety of any person might thereby be jeopardised.

Form of warrant.

14. A search warrant shall be in or to the effect of the prescribed form.

Notice to occupier of premises entered pursuant to warrant.

15. (1) An authorised justice shall prepare and furnish an occupier's notice to the person to whom the authorised justice issues a search warrant.

(2) An occupier's notice furnished in relation to a search warrant—

- (a) shall be in or to the effect of the prescribed form;

Search Warrants 1985

(b) shall specify—

- (i) the name of the person who applied for the warrant;
- (ii) the name of the authorised justice who issued the warrant;
- (iii) the date and the time when the warrant was issued; and
- (iv) the address or other description of the premises the subject of the warrant; and

(c) shall contain a summary of the nature of the warrant and the powers conferred by the warrant.

(3) A person executing a search warrant shall—

- (a) upon entry into or onto the premises or as soon as practicable thereafter, serve the occupier's notice on a person who appears to be an occupier of the premises and to be of or above the age of 18 years; or
- (b) if no such person is then present in or on the premises, serve the occupier's notice on the occupier of the premises, either personally or in such other manner as the authorised justice who issued the warrant may direct, as soon as practicable after executing the warrant.

(4) Service of an occupier's notice pursuant to subsection (3) (b) may be postponed by the authorised justice who issued the search warrant if that authorised justice is satisfied that there are reasonable grounds for the postponement.

(5) Service of an occupier's notice pursuant to subsection (3) (b) may be postponed on more than one occasion, but shall not be postponed on any one occasion for a period exceeding 6 months.

Duty to show warrant.

16. A person executing a search warrant shall produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

Search Warrants 1985

Use of force to enter premises, etc.

17. (1) A person authorised to enter premises pursuant to a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.

(2) A person authorised to search premises pursuant to a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or on the premises for the purposes of that search.

Use of assistants to execute warrant.

18. A person may execute a search warrant with the aid of such assistants as the person considers necessary.

Execution of warrant by day or night.

19. (1) A search warrant may be executed by day, but shall not be executed by night unless the authorised justice, by the warrant, authorises its execution by night.

(2) In subsection (1)—

“by day” means during the period between 6 a.m. and 9 p.m. on any day;

“by night” means during the period between 9 p.m. on any day and 6 a.m. on the following day.

Expiry of warrant.

20. A search warrant ceases to have effect—

(a) except in the case of a telephone search warrant—on the expiration of the period of 1 month after its issue;

(b) in the case of a telephone search warrant—on the expiration of the period of 24 hours after its issue;

(c) if it is withdrawn by the authorised justice who issued the warrant;
or

(d) when it is executed,

whichever first occurs.

Report to authorised justice on execution of warrant, etc.

21. (1) The person to whom a search warrant is issued shall furnish a report in writing to the authorised justice who issued the warrant—

- (a) stating whether or not the warrant was executed;
- (b) if the warrant was executed—setting out briefly the result of the execution of the warrant (including a brief description of anything seized);
- (c) if the warrant was not executed—setting out briefly the reasons why the warrant was not executed;
- (d) stating whether or not an occupier's notice has been served in connection with the execution of the warrant;
- (e) in the case of a telephone search warrant—containing a copy of the form of search warrant and the form of occupier's notice (if any) completed by the person; and
- (f) containing such other particulars as may be prescribed.

(2) A report with respect to a search warrant shall be made within 10 days after the execution of the warrant or the expiry of the warrant, whichever first occurs.

Death, absence, etc., of authorised justice who issued warrant.

22. Where the authorised justice who issued a search warrant has died, has ceased to be an authorised justice or is absent—

- (a) a report required to be furnished to that authorised justice pursuant to section 21; or
- (b) a power exercisable by that authorised justice under section 15 (3) (b) or (4),

shall be furnished to, or may be exercised by, as the case may be, any other authorised justice.

Search Warrants 1985

Defects in warrants.

23. A search warrant is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.

PART IV.**MISCELLANEOUS.****Abolition of common law search warrants.**

24. Any common law power conferred on a justice of the peace or any other person to issue a warrant authorising a person to enter premises for the purpose of searching for stolen goods or any other thing is abolished.

Proceedings for offences.

25. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations.

26. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may impose a penalty not exceeding \$500 for any contravention thereof.

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;

Search Warrants 1985

(b) apply differently according to different factors of a specified kind;
or

(c) authorise any matter or thing to be from time to time determined,
applied or regulated by any specified person or body,

or may do any combination of those things.
