

SEARCH WARRANTS (AMENDMENT) ACT 1991 No. 92

NEW SOUTH WALES



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SEARCH WARRANTS (AMENDMENT) ACT 1991 No. 92

NEW SOUTH WALES



Act No. 92, 1991

An Act to amend the Search Warrants Act 1985 with respect to applications for search warrants and the issuing and duration of search warrants, and in other respects; and to amend certain other Acts consequentially. [Assented to 17 December 1991]

Search Warrants (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Search Warrants (Amendment) Act 1991.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Search Warrants Act 1985 No. 37

3. The Search Warrants Act 1985 is amended as set out in Schedule 1.

Consequential amendment of other Acts

4. Each Act specified in Schedule 2 is amended as set out in that Schedule.

Transitional provision—application of amendments

5. (1) An amendment made by this Act (other than an amendment contained in Schedule 1 (3) or (9)) does not apply to any application for a search warrant made before the commencement of the amendment or any search warrant issued before that commencement.

(2) The amendment made by Schedule 1 (3) applies to offences committed after the commencement of that amendment.

(3) The amendment made by Schedule 1 (9) applies to search warrants executed after the commencement of that amendment.

**SCHEDULE 1—AMENDMENT OF SEARCH WARRANTS
ACT 1985**

(Sec. 3)

(1) Section 3 (**Definitions**):

Omit the definition of “authorised justice”, insert instead:

“authorised justice” means:

(a) a Magistrate; or

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- (b) a justice of the peace who is a Clerk of a Local Court; or
 - (c) a justice of the peace who is employed in the Department of Courts Administration and who is declared (whether by name or by reference to the holder of a particular office), by the Minister administering this Act by instrument in writing or by order published in the Gazette, to be an authorised justice for the purposes of this Act;
- (2) Section 5 (**Application for warrant in respect of certain offences, stolen property etc.**):
- In section 5 (1), after “there is”, insert “or, within 72 hours, will be”.
- (3) Section 9 (**Obstruction etc. of person executing warrant**):
- Omit “Penalty—\$2,000 ‘or imprisonment for 2 years, or both”, insert instead “Maximum penalty: 100 penalty units or imprisonment for 2 years, or both”.
- (4) Section 10 (**Definitions**):
- Definition of “search warrant”:
- (a) Insert in alphabetical order of Acts “section 36 of the Confiscation of Proceeds of Crime Act 1989;”.
 - (b) Omit “section 5 of the Dentists Act 1934”, insert instead “section 59 of the Dentists Act 1989”.
 - (c) Omit “section 41 of the Education and Public Instruction Act 1987;”.
 - (d) Insert in alphabetical order of Acts “section 11 of the New South Wales Crime Commission Act 1985;”.
 - (e) Omit “section 11 of the State Drug Crime Commission Act 1985;”.
 - (f) Omit “section 27 of the Wheat Marketing Act 1984;”.
- (5) Section 11 (**Application for warrant in person**):
- Omit section 11 (1) and (2), insert instead:
- (1) An application for a search warrant must be in writing in the form prescribed by the regulations and must be made by the applicant in person.

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**SCHEDULE 1—AMENDMENT OF SEARCH WARRANTS ACT
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(2) An authorised justice must not issue a search warrant unless the information given by the applicant in or in connection with the application is verified before the authorised justice on oath or affirmation or by affidavit.

(6) Section 12:

Omit the section, insert instead:

Telephone search warrant

12. (1) In this section, “**telephone**” includes radio, facsimile and any other communication device.

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

(3) An authorised justice must not issue a search warrant on 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) An application under this section must be made by facsimile if the facilities to do so are readily available for that purpose.

(5) 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.

(6) An authorised justice who issues a search warrant upon an application made by telephone is to:

- (a) complete and sign the warrant;
- (b) furnish the warrant to the person who made the application or inform that person of the terms of the warrant and of the date and 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.

(7) If a search warrant is issued on an application made by telephone, the applicant:

- (a) in a case where the applicant was not furnished with the search warrant—~~is to~~ complete a form of search

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1985—*continued*

warrant in the terms indicated by the authorised justice under subsection (6) and write on it the name of that authorised justice and the date and time when the warrant was signed; and

- (b) in a case where the applicant was not furnished with an occupier's notice—~~is to~~ complete a form of occupier's notice in the terms indicated by the authorised justice under subsection (6).

(8) A form of search warrant and a form of occupier's notice so completed is taken to be a search warrant issued, and an occupier's notice prepared and furnished, in accordance with this Act.

(9) A search warrant or occupier's notice is to be furnished by an authorised justice by transmitting it by facsimile, if the facilities to do so are readily available, and the copy produced by that transmission is taken to be the original document.

(10) In this section, a reference to facsimile includes a reference to any electronic communication device which transmits information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

- (7) Sections 12A, 12B:

After section 12, insert:

Information in application for warrant

12A. (1) An authorised justice must not issue a search warrant unless the application for the warrant includes the following information:

- (a) details of the authority of the applicant to make the application for the search warrant;
- (b) the grounds on which the warrant is being sought;
- (c) the address or other description of the premises the subject of the application;
- (d) if the warrant is required to search for a particular thing, a full description of that thing and, if known, its location;

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- (e) if a previous application for the same warrant was refused—details of the refusal and any additional information required by section 12C;
- (f) any other information required by the regulations.

(2) An authorised justice when determining whether there are reasonable grounds to issue a search warrant is to consider (but is not limited to considering) the following matters:

- (a) the reliability of the information on which the application is based, including the nature of the source of the information;
- (b) if the warrant is required to search for a thing in relation to an alleged offence—whether there is sufficient connection between the thing sought and the offence.

(3) The applicant must provide (either orally or in writing) such further information as the authorised justice requires concerning the grounds on which the warrant is being sought.

(4) Nothing in this section requires an applicant for a search warrant to disclose the identity of a person from whom information was obtained if the applicant is satisfied that to do so might jeopardise the safety of any person.

False or misleading information in applications

12B. (1) A person must not, in or in connection with an application for a search warrant, give information to an authorised justice that the person knows to be false or misleading in a material particular.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(2) This section applies to an application by telephone as well as in person.

(3) This section applies whether or not the information given is also verified on oath or affirmation or by affidavit.

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(8) Section 12C:

Before section 13, insert:

Further application for warrant after refusal

12C. (1) If an application by a person for a search warrant is refused by an authorised justice, that person (or any other person who is aware of the application) may not make a further application for the same warrant to that or any other authorised justice unless the further application provides additional information that justifies the making of the further application.

(2) However, a further application may be made to a Magistrate following a refusal to issue the warrant by an authorised justice who is not a Magistrate whether or not additional information is provided in the further application. Only one such further application may be made in any particular case.

(9) Section 15A:

After section 15, insert:

Announcement prior to entry

15A. (1) One of the persons executing a search warrant must, before any of the persons executing the warrant enters the premises:

- (a) announce that the person is authorised by the search warrant to enter the premises; and
- (b) give any person then on the premises an opportunity to allow entry into or onto the premises.

(2) A person executing a search warrant is not required to comply with this section if the person believes on reasonable grounds that immediate entry is required to ensure the safety of any person or to ensure that the effective execution of the search warrant is not frustrated.

(10) Section 19 (**Execution of warrant by day or night**):

After section 19 (1), insert:

(1A) An authorised justice is not to authorise the execution of a search warrant by night unless satisfied that there are reasonable grounds for doing so. Those grounds include (but are not limited to) the following:

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- (a) the execution of the warrant by day is unlikely to be successful because, for example, it is issued to search for a thing which is likely to be on the premises only at night or other relevant circumstances will only exist at night;
 - (b) there is likely to be less risk to the safety of my person if it is executed at night;
 - (c) an occupier is likely to be on the premises only at night to allow entry without the use of force.
- (11) Section 20 (**Expiry of warrant**):
- (a) Omit section 20 (a), insert instead:
 - (a) except in the case of a telephone search warrant—at the time specified in the warrant for its expiry;
 - (b) At the end of section 20, insert:
 - (2) An authorised justice who issues a search warrant (other than a telephone search warrant) must specify the time when the warrant is to expire.
 - (3) The time so specified is to be 72 hours after the issue of the search warrant or, if the authorised justice is satisfied that the warrant cannot be executed within 72 hours, any time within a further period not exceeding 72 hours.
 - (4) A search warrant which expires 72 hours after its issue may be extended by the authorised justice who issued the warrant if the authorised justice is satisfied that the warrant cannot be executed within 72 hours.
 - (5) The time for expiry of a search warrant may only be extended once.
 - (6) Any such extension:
 - (a) may not extend the period for which the warrant has effect beyond 144 hours after its issue; and
 - (b) may be made on the application of the person to whom the warrant was issued or any other person who is authorised to execute the warrant; and
 - (c) is to be made before the expiry of the warrant; and
 - (d) is to be made by issuing a replacement search warrant and occupier's notice.

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(7) If no time of expiry is specified in a search warrant, the warrant expires 72 hours after its issue.

(12) Section 21 (**Report to authorised justice on execution of warrant etc.**):

From section 21 (1) (e), omit “(if any) completed by the person”, insert instead “if those documents were not furnished to the person”.

(13) Section 24B:

After section 24A, insert:

References in other Acts to “authorised justice”

24B. A reference in any other Act to an authorised justice in relation to a search warrant to which Part 3 of this Act applies is to be read as a reference to an authorised justice within the meaning of this Act.

(14) Section 26 (**Regulations**):

From section 26 (2), omit “\$500”, insert instead “5 penalty units”.

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(Sec. 4)

Animal Research Act 1985 No. 123

From section 3 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985;

Building Services Corporation Act 1989 No. 147

From section 126 (7), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985;

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Business Franchise Licences (Petroleum Products) Act 1987 No. 94

From section 54 (1), omit the definition of “authorised justice”, insert instead:

“authorised justice” has the same meaning as in the Search Warrants Act 1985.

Business Franchise Licences (Tobacco) Act 1987 No. 93

From section 56 (1), omit the definition of “authorised justice”, insert instead:

“authorised justice” has the same meaning as in the Search Warrants Act 1985.

Canned Fruits Marketing Act 1979 No. 195

From section 22 (9), omit the definition of “authorized justice”, insert instead:

“authorised justice” has the same meaning as in the Search Warrants Act 1985;

Children (Care and Protection) Act 1987 No. 54

From section 3 (1), omit the definition of “authorised justice”, insert instead:

“authorised justice” has the same meaning as in the Search Warrants Act 1985;

Children (Interstate Transfer of Offenders) Act 1988 No. 85

From section 3, omit the definition of “authorised justice”, insert instead:

“authorised justice” has the same meaning as in the Search Warrants Act 1985;

Confiscation of Proceeds of Crime Act 1989 No. 90

(a) From section 35 (1), omit the definition of “authorised justice”, insert instead:

“authorised justice” has the same meaning as in the Search Warrants Act 1985;

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- (b) In section 36 (1), after “there is”, insert “or, within 72 hours, there will be”.

Crimes Act 1900 No. 40

- (a) From section 357EA (1), omit “or is being committed”, insert instead “committed, is being committed or, within 72 hours, will be committed”.
- (b) From section 357EA (4), omit the definition of “authorised justice”, insert instead:
“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Dairy Industry Act 1979 No. 208

From section 104 (1), omit the definition of “authorised justice”, insert instead:
“**authorised justice**” has the same meaning as in the Search Warrants Act 1985;

Dangerous Goods Act 1975 No. 68

From section 42 (1), omit the definition of “authorised justice”, insert instead:
“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Dental Technicians Registration Act 1975 No. 40

From section 25 (4), omit the definition of “authorised justice”, insert instead:
“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Dentists Act 1989 No. 139

From section 59 (7), omit the definition of “authorised justice”, insert instead:
“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

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Disability Services and Guardianship Act 1989 No. 257

From section 3 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985:

Disorderly Houses Act 1943 No. 6

From section 13 (1), omit the definition of “authorised justice” insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Drug Trafficking (Civil Proceedings) Act 1990 No. 23

- (a) From section 38 (1), omit “a Magistrate, or to a justice of the peace employed in the Attorney General’s Department,”, insert instead “an authorised justice within the meaning of the Search Warrants Act 1985”.
- (b) In section 38 (1), after “there is”, insert “or, within 72 hours, will be”.
- (c) From section 38 (2), omit “Magistrate or justice”, insert instead “authorised justice”.

Egg Industry (Repeal and Deregulation) Act 1989 No. 99

From section 69 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Electricity Act 1945 (1946 No. 13)

From section 211 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985;

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Entertainment Industry Act 1989 No. 230

From section 58 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Environmentally Hazardous Chemicals Act 1985 No. 14

From section 46 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Exhibited Animals Protection Act 1986 No. 123

From section 42 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Film and Video Tape Classification Act 1984 No. 155

From section 39 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Fisheries and Oyster Farms Act 1935 No. 58

From section 20G (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Friendly Societies Act 1989 No. 232

From section 119 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

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Gaming and Betting Act 1912 No. 25

- (a) From sections 22 (1) and 40 (1), omit the definition of “authorised justice” wherever occurring, insert instead:
- “authorised justice”** has the same meaning as in the Search Warrants Act 1985.
- (b) In sections 22 (2) and 40 (2), after “used” wherever occurring, insert “or, within 72 hours, will be used”.

Gas Act 1986 No, 213

From section 127 (1), omit the definition of “authorised justice”, insert instead:

“authorised justice” has the same meaning as in the Search Warrants Act 1985.

Indecent Articles and Classified Publications Act 1975 No. 32

From section 7 (1), omit the definition of “authorised justice”, insert instead:

“authorised justice” has the same meaning as in the Search Warrants Act 1985.

Industrial and Commercial Training Act 1989 No. 77

From section 90 (5), omit the definition of “authorised justice”, insert instead:

“authorised justice” has the same meaning as in the Search Warrants Act 1985.

Liquor Act 1982 No. 147

From sections 151 (1) and 151A (1), omit the definition of “authorised justice” wherever occurring, insert instead:

“authorised justice” has the same meaning as in the Search Warrants Act 1985.

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Local Government Act 1919 No. 41

From sections 213B (1) and 317JS (5), omit the definition of “authorised justice” wherever occurring, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Marketing of Primary Products Act 1983 No. 176

From section 138 (9), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985;

Medical Practitioners Act 1938 No. 37

From section 39AA (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985;

National Parks and Wildlife Act 1974 No. 80

From section 164 (9), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

New South Wales Crime Commission Act 1985 No. 117

From section 11 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985;

Non-Indigenous Animals Act 1987 No. 166

- (a) Omit section 24 (1) (a) and (b), insert instead “an authorised justice within the meaning of the Search Warrants Act 1985”.
- (b) From section 24 (2), omit “Magistrate or justice”, insert instead “authorised justice”.

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Occupational Health and Safety Act 1983 No. 20

From section 30A (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Ozone Protection Act 1989 No. 208

From section 19 (4), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Pesticides Act 1978 No. 57

From section 72 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Physiotherapists Registration Act 1945 No. 9

From section 18 (S), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Poultry Meat Industry Act 1986 No. 101

From section 16 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Prevention of Cruelty to Animals Act 1979 No. 200

From section 27 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

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Public Health Act 1991 No. 10

From section 73 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Radiation Control Act 1990 No. 13

From section 16 (4), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Revenue Laws (Reciprocal Powers) Act 1987 No. 86

From section 7 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985;

Stock (Artificial Breeding) Act 1985 No. 196

From section 33 (1), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Stock Medicines Act 1989 No. 182

From section 51 (4), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Summary Offences Act 1988 No. 25

- (a) In section 21 (1), after “contravened”, insert “or, within 72 hours, will be contravened”.

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(b) From section 21 (4), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Swimming Pools Act 1990 No. 31

From section 19 (5), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Trade Measurement Administration Act 1989 No. 234

From section 22 (4), omit the definition of “authorised justice”, insert instead:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

*[Minister's second reading speech made in—
Legislative Assembly on 13 November 1991
Legislative Council on 12 December 1991 a.m.]*