

1995—No. 392

**NATIONAL CRIME AUTHORITY (STATE PROVISIONS) ACT
1984—REGULATION**

(National Crime Authority (State Provisions) Regulation 1995)

NEW SOUTH WALES



[Published in Gazette No. 102 of 25 August 1995]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the National Crime Authority (State Provisions) Act 1984, has been pleased to make the Regulation set forth hereunder.

PAUL WHELAN MP
Minister for Police.

Citation

1. This Regulation may be cited as the National Crime Authority (State Provisions) Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. In this Regulation:

“**Authority**” means the National Crime Authority established by section 7 of the National Crime Authority Act 1984 of the Commonwealth;

“**the Act**” means the National Crime Authority (State Provisions) Act 1984.

Form of search warrant

4. A warrant issued by a Judge under section 12 of the Act must be in accordance with Form 1 in Schedule 1.

Note. Section 12 of the Act empowers a Judge of the Federal Court or the Supreme Court of New South Wales to issue a search warrant in accordance with the provisions of that section.

Service of summons to appear before Authority

5. (1) Each of the ways specified in this clause for serving a summons is prescribed for the purposes of section 19 (1) or (2) of the Act.

(2) If the summons is to be served on a natural person, it may be served:

- (a) by tendering a copy of the summons to the person or, if on tender of the copy the person refuses to accept it, by putting it down in the presence of the person or leaving it at or on the place where the person is; or
- (b) if service in that way is not practicable:
 - (i) by leaving a copy of the summons at the person's last known or usual place of residence or business with another person who is, or is reasonably believed to be, over the age of 16 years and is, or is reasonably believed to be, residing, or employed, at that place; or
 - (ii) by sending a copy of the summons by registered post or certified mail to the person at the person's last known or usual place of residence or business or at the person's last known or usual postal address.

(3) If the summons is to be served on a body corporate, it may be served:

- (a) by tendering a copy of it to a person who is, or is reasonably believed to be, an officer of, or in the employment of, the body corporate and is, or is reasonably believed to be, above the age of 16 years at the head office, a registered office, a principal office or a principal place of business of the body corporate; or
- (b) if on tender of the copy the person refuses to accept it, by leaving it at or upon the premises; or
- (c) by sending a copy of it by registered post or certified mail to the body corporate's head office, registered office, principal business office, principal place of business or postal address.

(4) If a Judge has given a direction that the summons should be served on a natural person, the summons may be served:

- (a) by leaving a copy of it with another person identified in the direction who, in the opinion of the Judge, is likely to bring its contents to the notice of that person; or
- (b) by sending it by registered post or certified mail to an address, specified in the direction, being the address of a place that the Judge has reasonable grounds to believe to be a place frequented by that person.

(5) A Judge may give a direction referred to in subclause (4) in relation to the service of a summons on a natural person only if satisfied on information given in writing by a member or an acting member of the Authority:

- (a) that service of the summons on the person in a way specified in subclause (2) has not been, or is not likely to be, successful; and
- (b) that service of the summons in a manner specified in that subclause is likely to result in the summons coming to the notice of the person.

(6) In this clause, “**Judge**” means:

- (a) a Judge of the Federal Court; or
- (b) a Judge of the Court of a State or Territory.

Note. Section 19 of the Act makes it an offence for a person to fail, without reasonable excuse, to attend a hearing of the Authority if summoned to attend as a witness.

Form of warrant for arrest of witness

6. A warrant issued under section 20 (1) of the Act for the apprehension of a person must be in accordance with Form 2 in Schedule 1.

Note. Section 20 of the Act empowers a Judge of the Federal Court, or the Supreme Court, to issue a warrant for the apprehension of a witness who has been ordered to surrender his or her passport if of the opinion that the witness is likely to leave Australia for the purpose of avoiding giving evidence before the National Crime Authority or of a witness who has absconded or is likely to abscond or is otherwise evading the service of a summons to attend before the Authority as a witness.

Notes in text

7. Notes in the text of this Regulation are explanatory notes only and do not form part of this Regulation.

Repeal

8. The National Crime Authority (State Provisions) Regulation 1986 is repealed.

Savings provisions

9. (1) A warrant or summons that complied with a provision of the National Crime Authority (State Provisions) Regulation 1986 is taken to be a warrant or summons that complies with the corresponding provision of this Regulation.

(2) If a summons served in accordance with clause 5 of the National Crime Authority (State Provisions) Regulation 1986 and the matter in relation to which it was served has not been completed before the commencement of this Regulation, the summons is, for the purposes of section 19 of the Act, taken to have been served in accordance with clause 5 of this Regulation.

SCHEDULE 1—FORMS

FORM 1

(Cl. 4)

National Crime Authority (State Provisions) Act 1984, section 12

SEARCH WARRANT

TO: *[name]*

* a member of the Australian Federal Police.

* a police officer of the *[insert the name of the State or Territory Police Force or Police Service concerned]*.

1. An application has been made under the National Crime Authority (State Provisions) Act 1984 for the issue of a warrant under section 12 of that Act in relation to:

- *land situated at *[identify the land concerned]*
- *premises situated at *[identify the premises concerned]*
- *the vessel *[insert name]* owned by *[insert name and address of owner]*
- *aircraft *[specify identifying marks]* owned by *[insert name and address of owner]*
- *vehicle *[specify type of vehicle and registration number]* owned by *[insert name and address of owner]*.

2. I, *[full name]*, a Judge of *[specify court]*, am satisfied, on the basis of information given to me *by affidavit/*orally/*by both affidavit and orally:

- (a) *that there are reasonable grounds for suspecting that on [specify a day that is a relevant day for the purposes of section 12 (1) of the National Crime Authority (State Provisions) Act 1984 or; if that day is the day or which, or a day before the day on which, the warrant is issued, insert "this day"] there may be on the land, premises, vessel, aircraft or vehicle concerned [specify the thing or things of a particular kind connected with a matter relating to a relevant criminal activity] connected with a matter relating to a relevant criminal activity, specified in the Schedule, into which the National Crime Authority is conducting a special investigation; and*

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- (b) that, if a summons were not issued for the production of the thing or things, the thing or things might be concealed, lost, mutilated or destroyed; and
- (c) that I therefore have reasonable grounds for issuing this warrant.

3. You are therefore authorised, with such assistance as you think necessary and if necessary by force:

- (a) to enter on or into the land, premises, vessel, aircraft or vehicle concerned *between the times of *[insert times]/or* *at any time of the day or night; and
- (b) to search the land, premises, vessel, aircraft or vehicle for *[insert particulars of the things authorised to be seized]* connected with the matter specified in the Schedule; and
- (c) to seize any things connected with the matter specified in the Schedule found on or in the land, premises, vessel, aircraft or vehicle and deliver them to the Authority.

SCHEDULE

[Specify matter relating to the relevant criminal activity into which Authority is conducting special investigation and with which the things the seizure of which is to be authorised are connected]

4. This warrant ceases to be effective on *[insert a date that is not more than 1 month after the date of issue of the warrant]*.

Issued on 19

[Signature and designation of the Judge who issues the warrant]

[The reasons for the issue of the warrant are to be given by the Judge issuing the warrant where the warrant is issued on an application made by telephone in accordance with section 13 of the National Crime Authority (State Provisions) Act 1984. Omit if inapplicable.]

5. This warrant is issued for the following reasons:

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* Omit if inapplicable.

EXPLANATORY NOTE

The replacement Regulation supplements the provisions of the National Crime Authority (State Provisions) Act 1984. The Regulation deals with matters relating to:

- the issue of search warrants authorising the search of land, premises, vessels, aircraft and vehicles by the National Crime Authority's officers; and
- the issue of summonses requiring persons to appear before the Authority to give evidence or produce documents and other things; and
- the issue of warrants for the apprehension of witnesses.

This Regulation is made under the National Crime Authority (State Provisions) Act 1984, including section 34 (the general regulation making power) and section 19.

This regulation relates to matters of a machinery nature.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
