



New South Wales

Law Enforcement (Powers and Responsibilities) Amendment (Criminal Organisations) Regulation 2009

under the

Law Enforcement (Powers and Responsibilities) Act 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Law Enforcement (Powers and Responsibilities) Act 2002*.

VERITY FIRTH, MP
Acting Attorney General

Explanatory note

The object of this Regulation is to prescribe the form of criminal organisation search warrants and related documents under Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002 (the Act)* as a consequence of amendments made to the Act by the *Criminal Organisations Legislation Amendment Act 2009*. This Regulation also makes some miscellaneous amendments in respect of other kinds of search warrants under the Act.

This Regulation is made under the *Law Enforcement (Powers and Responsibilities) Act 2002*, including sections 66, 67 and 238 (the general regulation-making power).

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Clause 1 Law Enforcement (Powers and Responsibilities) Amendment (Criminal Organisations) Regulation 2009

**Law Enforcement (Powers and Responsibilities)
Amendment (Criminal Organisations) Regulation 2009**

under the

Law Enforcement (Powers and Responsibilities) Act 2002

1 Name of Regulation

This Regulation is the *Law Enforcement (Powers and Responsibilities) Amendment (Criminal Organisations) Regulation 2009*.

2 Commencement

This Regulation commences on 7 August 2009 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Law Enforcement (Powers and Responsibilities) Regulation 2005

[1] Clause 3 Definitions

Insert “or a criminal organisation search warrant” after “covert search warrant” in paragraph (a) of the definition of *search warrant* in clause 3 (1).

[2] Clause 3 (1), definition of “search warrant”

Insert after paragraph (a1):

(a2) a criminal organisation search warrant,

[3] Clause 4 Form of application for warrant or notice to produce

Insert “or a criminal organisation search warrant” after “covert search warrant” in clause 4 (1) (a).

[4] Clause 4 (1) (a2)

Insert after clause 4 (1) (a1):

(a2) Part 1 of Form 1B is the form for an application for a criminal organisation search warrant, and

[5] Clause 5 Determination of application for warrant or notice to produce—record by eligible issuing officer

Insert “or a criminal organisation search warrant” after “covert search warrant” in clause 5 (a).

[6] Clause 5 (a2)

Insert after clause 5 (a1):

(a2) in the case of an application for a criminal organisation search warrant—Part 2 of Form 1B,

[7] Clause 6 Form of warrant or notice to produce

Insert “or a criminal organisation search warrant” after “covert search warrant” in clause 6 (1) (a).

[8] Clause 6 (1) (a2)

Insert after clause 6 (1) (a1):

(a2) Form 9B is the form for a criminal organisation search warrant, and

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[9] Clause 7 Form of occupier's notice: section 67 (2) (a)

Insert "or a criminal organisation search warrant" after "covert search warrant" in clause 7 (a).

[10] Clause 7 (a2)

Insert after clause 7 (a1):

(a2) Form 17C is the form for an occupier's notice in relation to a criminal organisation search warrant, and

[11] Clause 10 Keeping and inspection of records

Omit "Local Court" wherever occurring in clause 10 (4) and (6).

Insert instead "Local Court registry or the Supreme Court registry (as the case may be)".

[12] Clause 11 Certified records not available for inspection

Omit "authorised officer" wherever occurring from clause 11 (1) and (4).

Insert instead "eligible issuing officer".

[13] Clause 11 (2)

Omit "clause 10 (5)". Insert instead "clause 10 (5A) or (6)".

[14] Clause 11A Certified records not available for inspection

Omit the clause.

[15] Schedule 1 Forms

Omit "(other than covert search warrant)" from the heading to Form 1.

Insert instead "(other than covert or criminal organisation search warrant)".

[16] Schedule 1, Form 1

Omit "(other than covert search warrants)" from the first note to the Form.

Insert instead "(other than covert or criminal organisation search warrants)".

[17] Schedule 1, Form 1

Insert "registry" after "Local Court" in the final note to the Form.

[18] Schedule 1, Form 1A

Omit "(other than covert search warrants)" from the first note to the Form.

Insert instead "(other than covert or criminal organisation search warrants)".

[19] Schedule 1, Form 1A

Omit “*” from item 2 (a) and (b) of Part 1.

[20] Schedule 1, Form 1A

Omit items 4 and 5 of Part 1. Insert instead:

- 4 The name of the occupier of the subject premises is [*Insert name or “not known”.*]
- 5 I believe each of the following persons has committed, or is intending to commit, a searchable offence as follows: [*Insert names and the relevant searchable offence for each name or “names not known”.*]

[21] Schedule 1, Form 1A

Omit “clause 11A” from item 18 of Part 1. Insert instead “clause 11”.

[22] Schedule 1, Form 1A

Omit “Local Court” from the final note to the Form.

Insert instead “Supreme Court registry”.

[23] Schedule 1, Form 1B

Insert after Form 1A:

Form 1B Application for criminal organisation search warrant/record of application

(Clauses 4 (1) (a2) and 5 (a2))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Note. This Form is to be used for search warrants in relation to organised crime offences. Form 1 should be used for other Part 5 search warrants, Form 1A should be used for covert search warrants and Form 2 should be used for search warrants (other than Part 5 search warrants).

Part 1 Application

On [*Date*], I, [*Name and rank*] of [*Place of work*], apply for a search warrant to enter and search the premises known as [*Address*] in the State of New South Wales, being a [*Description of premises (eg dwelling house)*].

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

- 1 I have been authorised to make this application by [*Name and rank or position*] of [*Place of work*]. A copy of the authorisation is attached.
- 2 I have reasonable grounds for suspecting that:
 - (a) there is, or within 7 days will be, in or on the premises, the following things: [*List items to be searched for. If exact location of items is known, include that information.*]

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(b) the things are connected with the following searchable offence(s) within the meaning of section 46A (1) (c) of the *Law Enforcement (Powers and Responsibilities) Act 2002*: [*Insert description of offence(s).*]

3 The name of the occupier of the premises is [*Insert name or "not known"*].]

4 I believe each of the following persons has committed, or is intending to commit, a searchable offence as follows: [*Insert names and the relevant searchable offence for each name or "names not known"*].]

5 I believe/do not believe [*Delete whichever is not applicable*] the occupier of the premises is knowingly concerned with the commission of the searchable offence(s) of [*Insert description of offence(s).*]

6 I rely on the following grounds in support of this application: [*Insert the reasonable grounds on which the application for the search warrant is based. If space is insufficient, continue overleaf or attach a separate sheet.*]

[*7 and 8 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of the previous application to this Form.*]

7* The following are details of the refusal of a previous application:

8* The additional information that I consider justifies the making of this further application is:

9* I seek that a certificate pursuant to clause 11 of the *Law Enforcement (Powers and Responsibilities) Regulation 2005* be issued, on the following grounds: [*Specify grounds*]

Sworn/declared and affirmed* before me on [*Date*] at [*Place*] in the State of New South Wales.

Applicant [*Print name and insert signature.*]

Justice of the Peace [*Print name and insert signature.*]

[*This application may be sworn before the eligible issuing officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.*]

[* *Delete if inapplicable.*]

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the eligible issuing officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Eligible issuing officer's record of application for a search warrant

On [Date] at [Time], I, the undersigned eligible issuing officer, received this application for a search warrant.

- 1* [To be completed if the application was not made in person.]
The application was made by [Specify how the application was made (eg facsimile, telephone)] and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.
- 2* [To be completed if the eligible issuing officer required the applicant to provide further information concerning the grounds on which the warrant was sought.]
*Further information provided by the applicant, as required by me, is attached.
*Particulars of further information orally provided by the applicant, as required by me, are as follows: [Specify particulars.]
- 3 On considering the application I found/did not find* that there were reasonable grounds for issuing the warrant.
- 4 The relevant particulars of the grounds on which I relied to justify the issue of/refusal to issue [Delete whichever is inapplicable] the warrant are as follows: [Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.]
- 5 [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)* execution of the warrant by day is unlikely to be successful,
 - (b)* there is likely to be less risk to the safety of any person if it is executed by night,
 - (c)* an occupier is likely to be on the premises only at night to allow entry without the use of force,
 - (d)* [Other grounds].
- 6 The search warrant was issued at [Time] on [Date].

Eligible issuing officer [Print name and insert signature.]

[* Delete if inapplicable.]

Note. Return this Form, together with a copy of the warrant and a copy of the occupier's notice, to the Supreme Court registry named in the occupier's notice.

[24] Schedule 1, Forms 2–8

Insert “registry” after “Local Court” wherever occurring in the final note to each of the Forms.

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[25] Schedule 1, Form 9

Omit “(other than covert search warrant)” from the heading to the Form.

Insert instead “(other than covert or criminal organisation search warrant)”.

[26] Schedule 1, Form 9B

Insert after Form 9A:

Form 9B Criminal organisation search warrant

(Clause 6 (1) (a2))

(Law Enforcement (Powers and Responsibilities) Act 2002)

This search warrant expires at [Time] on [Date] and must not be used after that time.

On [Date], an eligible issuing officer empowered to grant search warrants under Division 2 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this search warrant authorising [Name and rank] of [Place of work] (the applicant), a police officer, and all other police officers, as follows:

- 1 To enter the premises known as [Address] being a [Description of premises (eg dwelling house)].
- 2 To search those premises for any of the following things: [List and describe the things to be searched for with particularity. If space is insufficient, continue overleaf or attach a separate sheet.]
The applicant has reasonable grounds for suspecting that those things are connected with the following searchable offences: [Specify relevant offences.]

This search warrant may be executed:

- (a)* only by day (ie between 6 am and 9 pm)
- (b)* by day (ie between 6 am and 9 pm) or night (ie between 9 pm and 6 am).
[* Delete if inapplicable.]

In executing this search warrant a police officer may exercise the powers provided by the *Law Enforcement (Powers and Responsibilities) Act 2002*. These include the following powers:

- (a) to enter the named premises,
- (b) to search for the things (if any) mentioned in this warrant,
- (c) to use any persons necessary to assist in the execution of the warrant,
- (d) to use such force as is reasonably necessary to enter the premises,
- (e) to break open any receptacle in or on the premises for the purposes of the search of the premises if it is reasonably necessary to do so,
- (f) to search any persons found in or on the premises who are reasonably suspected of having a thing mentioned in this warrant,

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- (g) to arrest any persons found in or on the premises whom a police officer suspects on reasonable grounds of having committed an offence,
 - (h) to seize, detain, remove from the premises or guard anything mentioned in this warrant and any other thing found by a police officer in the course of executing this warrant that the police officer believes on reasonable grounds is connected with any offence,
 - (i) to disable any alarm, camera or surveillance device at the premises,
 - (j) to pacify any guard dog at the premises,
 - (k) to render safe any dangerous article found in or on the premises,
 - (l) to operate electronic and other equipment brought to the premises or at the premises to examine a thing found at the premises,
 - (m) to move a thing found at the premises to another place for examination in order to determine whether it is or contains a thing that may be seized,
 - (n) to operate equipment at the premises to access data (including data held at premises other than the subject premises),
 - (o) to do anything that it is reasonably necessary to do for the purpose of preventing the loss or destruction of, or damage to, any thing connected with an offence that the police believe on reasonable grounds to be at those premises, including by blocking any drains at or used in connection with the premises.

Signed [*Insert signature.*]

Date

[The eligible issuing officer should sign and date the warrant and initial any corrections. In the case of a telephone search warrant, in circumstances where the warrant is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the eligible issuing officer and write on it the date and time when the warrant was signed.]

[27] Schedule 1, Form 17

Omit “**(other than covert search warrant)**” from the heading to the Form.

Insert instead “**(other than covert or criminal organisation search warrant)**”.

[28] Schedule 1, Form 17

Omit the first paragraph under the matter relating to Inspection. Insert instead:

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at [*Insert the appropriate Local Court registry.*] You may seek to inspect those documents by arrangement with that registry. You should produce this notice at the registry when seeking to inspect those documents.

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[29] Schedule 1, Form 17A

Omit the matter relating to Inspection (including the note). Insert instead:

Inspection

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at *[Insert the appropriate Supreme Court registry.]* You may seek to inspect those documents by arrangement with that registry. You should produce this notice at the registry when seeking to inspect those documents.

[30] Schedule 1, Form 17C

Insert after Form 17B:

Form 17C Occupier's notice for criminal organisation search warrant

(Clause 7 (a2))

(Law Enforcement (Powers and Responsibilities) Act 2002)

A search warrant has been issued by an eligible issuing officer. It gives the authority and power to the police to enter and search the premises at *[Address]*, being a *[Description of premises (eg dwelling house)]*.

Expiry

The search warrant will expire at *[Time]* on *[Date]* / expired on at *[Time]* on *[Date]* *[Delete whichever is not applicable.]*

Warnings

1. 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 52 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, the maximum penalty for obstructing or hindering a search without reasonable excuse is a fine of \$11,000 or 2 years imprisonment (or both).

2. It is an offence under section 63 (1A) of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this notice knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Powers given by the search warrant

This search warrant authorises police to use such force as is reasonably necessary to enter the premises and to carry out the purposes of the warrant.

The things the police are empowered to search for are: *[If space is insufficient, continue overleaf or attach a separate sheet.]*

The police can seize, detain, remove from the premises or guard any of the things mentioned in the warrant and anything that they find, while executing

the search warrant, that is believed on reasonable grounds to be connected with any offence.

The police also have the power to:

- (a) break open any receptacle in or on the premises for the purposes of the search of the premises if it is reasonably necessary to do so, and
- (b) search any persons on the premises who are reasonably suspected of having a thing that is mentioned in the warrant, and
- (c) arrest any person who is reasonably suspected of committing an offence, and
- (d) if the warrant is issued in relation to a child prostitution offence—make inquiries relating to any such offence, and
- (e) disable any alarm, camera or surveillance device at the premises, and
- (f) pacify any guard dog at the premises, and
- (g) render safe any dangerous article found in or on the premises, and
- (h) operate electronic and other equipment brought to the premises or at the premises to examine a thing found at the premises, and
- (i) move a thing found at the premises to another place for examination in order to determine whether it is or contains a thing that may be seized, and
- (j) operate equipment at the premises to access data (including data held at premises other than the subject premises), and
- (k) do anything that it is reasonably necessary to do for the purpose of preventing the loss or destruction of, or damage to, any thing connected with an offence that the police believe on reasonable grounds to be at those premises, including by blocking any drains at or used in connection with the premises.

Issue details

The search warrant was granted by an eligible issuing officer under the *Law Enforcement (Powers and Responsibilities) Act 2002* on [Date] at [Time].

The warrant was issued on the application of [Name and rank] of [Place of work].

Basis for the issue of the warrant

The warrant was granted on the basis that the eligible issuing officer found that there were reasonable grounds for the issue of the warrant and, in particular, that the applicant had reasonable grounds to suspect that there were on the premises the things listed above, which were things connected with the offence of: [Specify offence.]

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Schedule 1

Amendment of Law Enforcement (Powers and Responsibilities) Regulation 2005

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.

Limitations on the powers conferred

The following limitations apply to the warrant:

- (a) the warrant must be executed before the date and time of the expiry given above,
- (b) any force used to enter the premises must be reasonably necessary,
- (c) the warrant must be executed between 6 am and 9 pm unless the warrant states that it may be executed by day or night,
- (d) the warrant must be shown to you if you ask to see it,
- (e) 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 (not including a thing that may be moved to another place for examination in order to determine whether it is or contains a thing that may be seized).

Inspection

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at [*Insert the appropriate Supreme Court registry.*] You may seek to inspect those documents by arrangement with that registry. You should produce this notice at the registry when seeking to inspect those documents.

Signed [*Insert signature.*] [*In the case of a notice relating to a telephone search warrant, in circumstances where the warrant is issued but the notice is not furnished to the applicant (for example, because facsimile facilities are not available), the applicant officer is to complete this Form of notice in the terms dictated by the eligible issuing officer.*]

Date

[31] Schedule 1, Form 18

Omit the first paragraph under the matter relating to Inspection. Insert instead:

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at [*Insert the appropriate Local Court registry.*] You may seek to inspect those documents by arrangement with that registry. You should produce this notice at the registry when seeking to inspect those documents.

[32] Schedule 1, Form 19

Omit the first paragraph under the matter relating to Inspection. Insert instead:

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at [*Insert the appropriate Local Court registry.*] You may seek to inspect those documents by arrangement with that registry. You should produce this notice at the registry when seeking to inspect those documents.

[33] Schedule 1, Form 20

Omit “Local Court” from the final note to the Form.

Insert instead “Local Court registry or the Supreme Court registry”.

[34] Schedule 1, Form 21

Insert “registry” after “Local Court” in the final note to the Form.