

SEARCH WARRANTS (AMENDMENT) BILL 1991

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill deals mainly with amendments to procedural matters connected with applications for search warrants and the issue of search warrants.

The object of this Bill is to amend the Search Warrants Act 1985:

- (a) to limit the categories of persons who are authorised justices for the purposes of issuing search warrants; and
- (b) to specify additional information that is to be included in an application for a search warrant and to specify certain matters that are to be taken into account when determining an application for a search warrant; and
- (c) to require applications that cannot be made in person because of urgency to be made by means of facsimile transmission, if available, instead of by telephone; and
- (d) to restrict the making of further applications for a search warrant after an application for the warrant has been refused; and
- (e) to make it an offence to provide false or misleading information in connection with applications for search warrants; and
- (f) to enable an application for a warrant to search for a thing to be made up to 72 hours in advance of the thing being on the premises concerned; and
- (g) to require a person executing a warrant to announce his or her presence prior to entry to the premises concerned unless the situation requires immediate entry; and
- (h) to give some guidance as to what are reasonable grounds for issuing a search warrant that may be executed at night; and
- (i) to reduce the period for which a search warrant remains in force; and
- (i) to increase the penalty for obstructing a person executing a search warrant; and
- (k) for law revision purposes.

The Bill also amends various other Acts consequentially.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 gives effect to Schedule 1 which contains amendments to the Search Warrants Act 1985.

Clause 4 gives effect to Schedule 2 which contains consequential amendments to other Acts.

Clause 5 is a transitional provision that makes it clear that the amendments to the Search Warrants Act 1985 (other than those outlined in paragraphs (g) and (i) above) will not apply to applications for search warrants made, and search warrants issued, before the commencement of the amendments.

SCHEDULE 1—AMENDMENT OF SEARCH WARRANTS ACT 1985

Authorised justices

At present the Act defines an “authorised justice” as a Magistrate or a justice of the peace employed in the Department of Courts Administration. Schedule 1 (1) replaces the definition so that “authorised justice” will mean a Magistrate or a Clerk of a Local Court, or a justice of the peace employed in the Department of Courts Administration and declared by the Attorney General to be an authorised justice.

Schedule 1 (13) provides that references to an authorised justice in search warrant provisions in other Acts are to be read as references to an authorised justice within the meaning of the Search Warrants Act 1985.

Advance applications for search warrants

The Act currently provides that a police officer may apply for a search warrant if the police officer has reasonable grounds for believing that there is a thing connected with an offence on certain premises.

Schedule 1 (2) enables an application to be made if the thing is not at that time on the premises but there are reasonable grounds for believing that the thing will be on the premises within 72 hours.

Increase in penalty

Schedule 1 (3) increases the penalty for obstructing someone in the execution of a search warrant from \$2,000 or imprisonment for 2 years, or both, to 100 penalty units (\$10,000) or imprisonment for 2 years, or both. The increased penalty will be similar to the penalty proposed for making false or misleading statements in an application for a search warrant.

Issue of search warrants

Schedule 1 (5) requires an application for a search warrant to be in the form prescribed by the regulations.

Schedule 1 (7) (proposed section 12A) specifies more detailed information to be included in an application for a search warrant. In particular, the application must include:

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- evidence of the authority of the applicant to make the application;
- the grounds on which the warrant is being sought;
- a description of the premises to be searched and, in the case of a warrant to search for a thing, a description of the thing and, if known, its location;
- disclosure of any previous applications made with respect to the same matter and, in such a case, the additional information which justifies the making of a further application.

The proposed section requires an authorised justice to have regard to certain matters in determining whether there are reasonable grounds to issue a search warrant. Those matters include the reliability of the information in the application (including the nature of the source of information relied on) and, if the warrant is to search for a thing in relation to an offence, the connection between the thing for which the search is proposed to be made and the offence.

Telephone warrants

The current provisions of the Act (section 12) allow an application for a search warrant to be made by telephone if the situation is urgent and it is not practicable for the application to be made in person.

Schedule 1 (6) substitutes section 12 so as to require an application that cannot be made in person because of urgency to be made by means of facsimile, if available, instead of by telephone. The authorised justice considering the application is to transmit a copy of the warrant together with the associated documents to the applicant if the application is approved.

Schedule 1 (12) contains a consequential amendment.

False or misleading information

Schedule 1 (7) (proposed section 12B) makes it an offence to knowingly give false or misleading information to an authorised justice in, or in connection with an application for a search warrant. (Maximum penalty: \$10,000 or imprisonment for 2 years, or both.) Proceedings for perjury will also be available if the application was made in person and verified on oath or affirmation or by affidavit.

Further application for warrant after refusal

Schedule 1 (8) provides that if an application for a search warrant is refused by an authorised justice, the applicant or any person who is aware of the previous application cannot re-apply for the warrant unless additional information is furnished to justify the further application. However, one further application may be made without the need to provide additional information if the original application was refused by an authorised justice who was not a Magistrate and the further application is made to a Magistrate.

Announcement prior to entry

Schedule 1 (9) requires one of the persons executing a search warrant to announce that the person is authorised to enter the premises concerned and to give an occupier a reasonable opportunity to allow entry onto the premises before anyone enters the

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premises to execute the warrant. The requirement does not apply if immediate entry is necessary to ensure the safety of any person or to ensure that the effective execution of the warrant is not frustrated.

Execution of search warrant by night

Schedule 1 (10) states that an authorised justice is not to authorise the execution of a search warrant at night unless there are reasonable grounds to do so (for example, for reasons of safety or because a thing which is being sought is unlikely to be on the premises concerned during the day).

Expiry of search warrants

Schedule 1 (11) provides that a search warrant (other than a telephone warrant) expires 72 hours after its issue. At present such warrants remain in force for 1 month. The amendments enable the granting of a warrant which has effect for 144 hours or the extension of a 72-hour warrant up to 144 hours, but only if the authorised justice is satisfied that the warrant could not be executed within 72 hours.

The period for which a telephone warrant has effect remains as at present—24 hours.

Law revision

Schedule 1 (4) removes references to repealed Acts and updates references to other Acts.

Schedule 1 (14) converts the maximum penalty which may be imposed by regulations under the Act to penalty units.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER ACTS

Schedule 2 updates references to an authorised justice in various Acts which authorise the issue of search warrants.

Schedule 2 also enables search warrants under the following Acts to be applied for up to 72 hours in advance of the time at which they will be required:

Confiscation of Proceeds of Crime Act 1989
Crimes Act 1900
Drug Trafficking (Civil Proceedings) Act 1990
Gaming and Betting Act 1912
Summary offences Act 1988
