

# Search Warrants Act 1985 No 37

[1985-37]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Chiropractors Act 2001 No 15](#) (not commenced)
  - [Osteopaths Act 2001 No 16](#) (not commenced)
  - [Dental Practice Act 2001 No 64](#) (not commenced)
  - [Physiotherapists Act 2001 No 67](#) (not commenced)
  - [Psychologists Act 2001 No 69](#) (not commenced)
  - [Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced)
  - [Optometrists Act 2002 No 30](#) (not commenced)
  - [Community Services Legislation Amendment Act 2002 No 42](#) (not commenced)
  - [Game and Feral Animal Control Act 2002 No 64](#) (not commenced)

### Authorisation

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# Search Warrants Act 1985 No 37



New South Wales

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# Search Warrants Act 1985 No 37



New South Wales

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.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the [Search Warrants Act 1985](#).

### 2 Commencement

- (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.

### 3 Definitions

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 who is a Clerk of a Local Court or the registrar of the Drug 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.

**occupier**, in relation to any premises, includes a person in charge of the premises.

**premises** includes any structure, building, aircraft, vehicle, vessel and place (whether

built upon or not), and any part thereof.

## **Part 2 Search warrants in respect of indictable, firearms and narcotics offences, stolen property etc**

### **4 Definitions—things connected with offence etc**

- (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.

### **5 Application for warrant in respect of certain offences, stolen property etc**

- (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 or, within 72 hours, will be in or on any premises:
  - (a) a thing connected with a particular indictable offence,
  - (b) a thing connected with a particular firearms offence,
  - (b1) a thing connected with a prohibited weapons offence,
  - (c) a thing connected with a particular narcotics offence, or
  - (d) a thing stolen or otherwise unlawfully obtained.
- (2) In subsection (1):

**firearms offence** means an offence under the [Firearms Act 1996](#) or the regulations under that Act, being an offence committed in respect of a firearm within the meaning 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:

- (a) an offence under the *Poisons Act 1966*, or the regulations thereunder, being an offence committed in respect of:
  - (i) a restricted substance prescribed for the purposes of section 16 of that Act, or
  - (ii) a drug of addiction within the meaning of that Act, or
- (b) an offence under the *Drug Misuse and Trafficking Act 1985*, or the regulations thereunder.

**prohibited weapons offence** means an offence under the *Weapons Prohibition Act 1998* or the regulations under that Act, being an offence committed in respect of a prohibited weapon within the meaning of that Act.

- (3) To avoid doubt, an application may be made under subsection (1) with respect to an act or omission that is an indictable offence (within the meaning of subsection (2)) even though the act or omission occurred outside New South Wales and was not an offence against the law of New South Wales.

## **6 Issue of warrant**

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).

## **7 Seizure of things pursuant to warrant**

- (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.

## **8 Search and arrest of persons pursuant to warrant**

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.

## **9 Obstruction etc of person executing warrant**

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

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

## **Part 3 Provisions relating to search warrants under Part 2 and certain other Acts**

### **10 Definitions**

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 2 of this Act,
- section 41 of the [Agricultural Industry Services Act 1998](#),
- section 51 of the [Animal Research Act 1985](#),
- section 68 of the [Apprenticeship and Traineeship Act 2001](#),
- section 22 of the [Canned Fruits Marketing Act 1979](#),
- section 29 of the [Charitable Fundraising Act 1991](#),
- section 233 of the [Children and Young Persons \(Care and Protection\) Act 1998](#),
- section 16 of the [Children \(Interstate Transfer of Offenders\) Act 1988](#),
- section 63 of the [Chiropractors and Osteopaths Act 1991](#),
- section 55 of the [Classification \(Publications, Films and Computer Games\)](#)

*Enforcement Act 1995,*

section 85 of the *Community Services (Complaints, Appeals and Monitoring) Act 1993,*

section 36 of the *Confiscation of Proceeds of Crime Act 1989,*

section 10 of the *Consumer Credit Administration Act 1995,*

section 84 of the *Contaminated Land Management Act 1997,*

section 381 of the *Co-operatives Act 1992,*

sections 357EA and 578D of the *Crimes Act 1900,*

section 42 of the *Dangerous Goods Act 1975,*

section 25 of the *Dental Technicians Registration Act 1975,*

section 59 of the *Dentists Act 1989,*

section 13 of the *Disorderly Houses Act 1943,*

section 38 of the *Drug Trafficking (Civil Proceedings) Act 1990,*

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

section 69 of the *Egg Industry (Repeal and Deregulation) Act 1989,*

sections 211 and 271 of the *Electricity Act 1945,*

section 63 of the *Electricity Supply Act 1995,*

section 58 of the *Entertainment Industry Act 1989,*

section 46 of the *Environmentally Hazardous Chemicals Act 1985,*

section 42 of the *Exhibited Animals Protection Act 1986,*

section 48 of the *Exotic Diseases of Animals Act 1991,*

section 76 of the *Fines Act 1996,*

section 260 of the *Fisheries Management Act 1994,*

section 12 of the *Fitness Services (Pre-paid Fees) Act 2000,*

section 18 of the *Food Act 1989,*

section 25 of the *Food Production (Safety) Act 1998,*

section 184 of the *Gaming Machines Act 2001,*



section 64 of the *Gas Supply Act 1996*,  
section 87 of the *Grain Marketing Act 1991*,  
sections 12 and 102 of the *Guardianship Act 1987*,  
section 34 of the *Health Care Complaints Act 1993*,  
section 126 of the *Home Building Act 1989*,  
section 388 of the *Industrial Relations Act 1996*,  
section 151 of the *Liquor Act 1982*,  
section 201 of the *Local Government Act 1993*,  
section 21E of the *Lotteries and Art Unions Act 1901*,  
section 138 of the *Marketing of Primary Products Act 1983*,  
section 125 of the *Medical Practice Act 1992*,  
section 164 of the *National Parks and Wildlife Act 1974*,  
section 11 of the *New South Wales Crime Commission Act 1985*,  
section 24 of the *Non-Indigenous Animals Act 1987*,  
section 52 of the *Noxious Weeds Act 1993*,  
section 58 of the *Occupational Health and Safety Act 2000*,  
section 19 of the *Ozone Protection Act 1989*,  
section 104 of the *Petroleum (Onshore) Act 1991*,  
section 18 of the *Physiotherapists Registration Act 1945*,  
section 45 of the *Police Integrity Commission Act 1996*,  
section 8 of the *Police Powers (Drug Detection Dogs) Act 2001*  
section 5 of the *Police Powers (Drug Premises) Act 2001*,  
section 16 of the *Poultry Meat Industry Act 1986*,  
section 27 of the *Prevention of Cruelty to Animals Act 1979*,  
section 73 of the *Public Health Act 1991*,  
section 72 of the *Public Lotteries Act 1996*,

section 16 of the *Radiation Control Act 1990*,  
section 75 of the *Rail Safety Act 1993*,  
section 7 of the *Revenue Laws (Reciprocal Powers) Act 1987*,  
section 24 of the *Road and Rail Transport (Dangerous Goods) Act 1997*,  
section 41 of the *Road Transport (General) Act 1999*,  
section 174 of the *Roads Act 1993*,  
section 196 of the *Rural Lands Protection Act 1998*,  
section 16 of the *Smoke-free Environment Act 2000*,  
section 33 of the *Stock (Artificial Breeding) Act 1985*,  
section 51 of the *Stock Medicines Act 1989*,  
section 21 of the *Summary Offences Act 1988*,  
section 29 of the *Swimming Pools Act 1992*,  
section 95 of the *Totalizator Act 1997*,  
section 22 of the *Trade Measurement Administration Act 1989*,  
section 39 of the *Unclaimed Money Act 1995*,  
section 238A of the *Workplace Injury Management and Workers Compensation Act 1998*,

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.

#### **11 Application for warrant in person**

- (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.
- (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.
- (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.

## 12 Telephone search warrant

- (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 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.

### **12A Information in application for warrant**

- (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,
  - (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.

### **12B False or misleading information in applications**

- (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.

### **12C Further application for warrant after refusal**

- (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.

### **13 Record of proceedings before authorised justice**

- (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.

### **14 Form of warrant**

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

### **15 Notice to occupier of premises entered pursuant to warrant**

- (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,
  - (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.

#### **15A Announcement prior to entry**

- (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.

#### **16 Duty to show warrant**

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.

#### **17 Use of force to enter premises etc**

- (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.

#### **18 Use of assistants to execute warrant**

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

#### **19 Execution of warrant by day or night**

- (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.
- (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:
  - (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 any 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.
- (2) In subsection (1):

**by day** means during the period between 6 am and 9 pm on any day.

**by night** means during the period between 9 pm on any day and 6 am on the following day.

#### **20 Expiry of warrant**

- (1) A search warrant ceases to have effect:

- (a) except in the case of a telephone search warrant—at the time specified in the warrant for its expiry,
  - (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.
- (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.
  - (7) If no time of expiry is specified in a search warrant, the warrant expires 72 hours after its issue.

## **21 Report to authorised justice on execution of warrant etc**

- (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 those documents were not furnished to 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.

## **22 Death, absence etc of authorised justice who issued warrant**

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.

## **23 Defects in warrants**

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 4 Miscellaneous**

### **24 Abolition of common law search warrants**

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.

### **24A Ministerial arrangements for things seized in connection with extra-territorial offences**

(1) In this section:

***appropriate authority*** means:

- (a) in relation to another State or a Territory of the Commonwealth (other than the Australian Capital Territory)—an authority exercising, in relation to the Police Force of that State or Territory, functions corresponding to those of the Commissioner of

Police in relation to the police force of New South Wales, or

(b) in relation to the Australian Capital Territory—the Commissioner of the Australian Federal Police.

(2) The Minister may enter into arrangements with a Minister of another State or a Territory of the Commonwealth under which:

(a) things seized under this Act that may be relevant to the investigation of an offence against the law of that State or Territory:

(i) are to be transmitted to the appropriate authority in that State or Territory for the purposes of the investigation of, or proceedings in respect of, that offence, and

(ii) when no longer required for the purposes of any such investigation or proceedings, are (unless disposed of by order or direction of a court or Magistrate) to be returned to the Commissioner of Police, and

(b) things seized under the law of that other State or Territory that may be relevant to the investigation of an offence against the law of this State:

(i) are to be transmitted to the Commissioner of Police, and

(ii) when no longer required for the purposes of the investigation of an offence, or proceedings in respect of an offence, are (unless disposed of by order or direction of a court or Magistrate) to be returned to the appropriate authority in the State or Territory in which they were seized.

(3) This section has effect notwithstanding section 7 (3).

#### **24B References in other Acts to “authorised justice”**

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.

#### **25 Proceedings for offences**

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.

#### **26 Regulations**

(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 5 penalty units 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,
- (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.

(4) A regulation may apply, to and in respect of search warrants issued under the *National Electricity (NSW) Law*, such of the provisions of this Act as are not inconsistent with that Law.

(5) A regulation may apply, to and in respect of search warrants issued under the *Gas Pipelines Access (New South Wales) Law*, such of the provisions of this Act as are not inconsistent with that Law.