

# Sheriff Act 2005 No 6

[2005-6]



New South Wales

## Status Information

### Currency of version

Historical version for 19 March 2020 to 13 May 2020 (accessed 24 November 2024 at 20:55)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**
  - [Security Industry Amendment \(Private Investigators\) Act 2016 No 40](#) (not commenced)
  - [Fair Trading Amendment \(Commercial Agents\) Act 2016 No 52](#) (not commenced)
- **Editorial note**

The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-rules (em-dashes). Text of the legislation is not affected.

This version has been updated.

### Authorisation

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New South Wales

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# Sheriff Act 2005 No 6



New South Wales

An Act with respect to the office of Sheriff.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Sheriff Act 2005*.

### 2 Commencement

- (1) This Act commences on a day to be appointed by proclamation, subject to subsections (2), (3) and (4).
- (2) Schedule 1.3 [2] commences on the commencement of Schedule 1.3 [1], or on the commencement of Part 6 of the *Court Security Act 2005*, whichever is the later.
- (3) Schedule 1.3 [4] commences on the commencement of Schedule 1.3 [3], or on the commencement of Part 6 of the *Court Security Act 2005*, whichever is the later.
- (4) Schedule 1.4 commences on the commencement of section 14, or on the commencement of Part 2 of the *Commercial Agents and Private Inquiry Agents Act 2004*, whichever is the later.

### 3 Definitions

- (1) In this Act—

**Charter of Justice** means the letters patent issued on 13 October 1823 pursuant to the Imperial Act 4 Geo IV c 96.

**exercise** a function includes perform a duty.

**function** includes power, authority and duty.

**Sheriff** means the person employed in the Public Service as Sheriff.

**Sheriff's alternate** means such person as is declared by the regulations to be the Sheriff's alternate for the purposes of this Act or, if no such person is declared, the Secretary of the Department of Justice.

***sheriff's officer*** means a person employed in the Public Service as a sheriff's officer.

(2) Notes in the text of this Act do not form part of this Act.

## **Part 2 Sheriff's functions**

### **4 Sheriff's functions**

- (1) The Sheriff has and may exercise such functions as are conferred or imposed on the Sheriff by or under this or any other Act or law.
- (2) The Sheriff also has and may exercise functions conferred or imposed on the Sheriff by or under an Act or law of the Commonwealth, another State or a Territory (including functions conferred by way of delegation).

### **5 Delegation of Sheriff's functions**

- (1) The Sheriff may delegate any of the Sheriff's functions, other than this power of delegation—
  - (a) to any sheriff's officer, or
  - (b) to any person employed in the Department of Justice, or
  - (c) to any person prescribed by the regulations or belonging to a class so prescribed.
- (2) Despite subsection (1), the Sheriff may delegate a function conferred or imposed on, or delegated to, the Sheriff by or under an Act or law of the Commonwealth, another State or a Territory, only if—
  - (a) the Act or law conferring or imposing the function on the Sheriff allows the Sheriff to delegate the function, or
  - (b) in relation to a function that is delegated—the delegation conferring the function on the Sheriff allows the Sheriff to subdelegate the function.

### **6 Exercise of Sheriff's functions by Sheriff's alternate**

- (1) The Sheriff's functions in relation to—
  - (a) any legal proceedings to which the Sheriff is a party, and
  - (b) any legal proceedings the subject of an order in force under subsection (2),are to be exercised by the Sheriff's alternate, and not by the Sheriff.
- (2) If satisfied that any legal proceedings may affect the Sheriff's interests, the court before which, or coroner before whom, the proceedings are being taken may order that the Sheriff's functions in relation to the proceedings be exercised by the Sheriff's alternate.

- (3) In this section, **legal proceedings** includes proceedings to enforce a judgment or order of a court and proceedings of an inquest or inquiry under the [Coroners Act 2009](#).

## **7 Oath or affirmation of office**

- (1) Before exercising any of the Sheriff's functions, the Sheriff, and each sheriff's officer, must take an oath of office, or make an affirmation of office, in the form and manner prescribed by the regulations.
- (2) Failure to comply with subsection (1) does not affect the validity of anything done by the Sheriff, or by a sheriff's officer, in the exercise of the Sheriff's functions.

## **7A Powers of Sheriff when executing writs and warrants for possession of land**

- (1) A sheriff's officer executing a writ or warrant for possession of land may do any of the following—
- (a) enter the premises and take all reasonably necessary steps to enforce the writ or warrant,
  - (b) use such force as is reasonably necessary to enforce the writ or warrant,
  - (c) obtain the assistance of a police officer.
- (2) A police officer may, at the request of a sheriff's officer, assist the sheriff's officer to enforce the writ or warrant.
- (3) The Sheriff must give the occupier of land subject to a writ of possession of land or a writ for the levy of property that relates to land not less than 30 days notice to deliver up possession of the land.
- (4) Subsection (3) does not apply if the execution of the writ has been previously stayed by a court or if a warrant for possession is issued under the [Residential Tenancies Act 2010](#), the [Residential \(Land Lease\) Communities Act 2013](#), the [Retirement Villages Act 1999](#) or the [Holiday Parks \(Long-term Casual Occupation\) Act 2002](#).
- (5) In this section—

**writ or warrant for possession of land** means—

- (a) a writ of possession of land, or
- (b) a writ for the levy of property that relates to land, or
- (c) a warrant for possession of residential premises under the [Residential Tenancies Act 2010](#), or
- (d) a warrant for possession of residential premises under the [Residential \(Land Lease\) Communities Act 2013](#), or

- (e) a warrant for possession of residential premises under the *Retirement Villages Act 1999*, or
- (f) a warrant for possession of a site under the *Holiday Parks (Long-term Casual Occupation) Act 2002*.

#### **7B Powers when executing certain arrest warrants**

- (1) A sheriff's officer executing an arrest warrant issued by a court under section 97 of the *Civil Procedure Act 2005* may require a person named in the warrant to submit to a personal search if the officer believes on reasonable grounds that it is prudent to do so to ascertain whether the person is carrying anything that would present a danger to a person.
- (2) Before requiring a person to submit to a personal search under this section, the sheriff's officer must show the person the arrest warrant and the officer's certificate of identification referred to in section 13.
- (3) A sheriff's officer may seize and detain a thing found in a personal search under this section that the officer believes on reasonable grounds would present a danger to a person.
- (4) A sheriff's officer who seizes any thing under subsection (3) must—
  - (a) if the officer is satisfied after examining the thing that its retention as evidence is not required and it is not a danger to a person—return the thing to the person from whom it was confiscated, or
  - (b) if the officer is not so satisfied—deliver the thing to a police officer as soon as is reasonably practicable.
- (5) A personal search of a person conducted under this section must, as far as is reasonably practicable in the circumstances, comply with the following requirements—
  - (a) the sheriff's officer must inform the person to be searched of the following matters—
    - (i) whether the person will be required to remove clothing during the search,
    - (ii) why it is necessary to remove the clothing,
  - (b) the sheriff's officer must ask for the person's co-operation,
  - (c) a personal search must be conducted—
    - (i) in a way that provides reasonable privacy for the person searched, and
    - (ii) as quickly as is reasonably practicable,

(d) the sheriff's officer must conduct the least invasive kind of search practicable in the circumstances,

(e) a personal search of a person must be conducted by a sheriff's officer of the same sex as the person or, if a sheriff's officer of that sex is unavailable, by another person of that sex at the direction of a sheriff's officer.

(6) If a sheriff's officer makes a requirement of a person under subsection (1) and the person fails immediately to comply with that requirement, the sheriff's officer may again make the requirement and, in that case, must warn the person that a failure immediately to comply with the requirement may be an offence.

(7) If a sheriff's officer makes a requirement of a person in accordance with subsection (6), the person must immediately comply with the requirement.

Maximum penalty—5 penalty units.

(8) In this section—

**personal search** has the same meaning as in the [Court Security Act 2005](#).

### **Part 3 Offences**

#### **8 Hindrance or obstruction of persons exercising Sheriff's functions**

A person must not hinder or obstruct the Sheriff, or any sheriff's officer or other person, in the Sheriff's, sheriff's officer's or other person's exercise of any of the Sheriff's functions.

Maximum penalty—100 penalty units or imprisonment for 6 months, or both.

#### **9 Impersonation of sheriff's officers**

A person who impersonates the Sheriff, or a sheriff's officer, is guilty of an offence.

Maximum penalty—100 penalty units or imprisonment for 6 months, or both.

#### **10 Wearing or possession of sheriff's officer uniforms by others**

(1) A person (not being a sheriff's officer) who wears or possesses a sheriff's officer uniform is guilty of an offence.

Maximum penalty—100 penalty units or imprisonment for 6 months, or both.

(2) A person (including a sheriff's officer) who uses sheriff's insignia otherwise than in the course of, and for the purpose of, exercising the functions of a sheriff's officer is guilty of an offence.

Maximum penalty—100 penalty units or imprisonment for 6 months, or both.

(3) A person is not guilty of an offence under this section if—



- (a) the act or omission constituting the offence is authorised by the regulations or by a licence granted to the person by the Sheriff, or
  - (b) the person establishes that the person otherwise had the permission of the Sheriff for the act or omission, or
  - (c) the person establishes that the person had a reasonable excuse for the act or omission.
- (4) Without limiting subsection (3), a person is not guilty of an offence under subsection (1) if the person wore or was in possession of the sheriff's officer uniform for the purposes of public entertainment.
- (5) The Sheriff may grant licences for the purposes of this section, with or without conditions, and may vary or revoke any such licences.
- (6) In this section—

***sheriff's insignia*** means—

- (a) any items (being insignia, emblems, logos, devices, accoutrements and other things) that are generally recognised as pertaining to the Sheriff or as being used by sheriff's officers, or
- (b) any parts of any such items, or
- (c) any reasonable imitation of any such items or parts, or
- (d) any thing or class of thing prescribed by the regulations as being within this definition (whether or not it may already be within this definition),

and includes sheriff's officer uniforms, but does not include any thing or class of thing prescribed by the regulations as being outside this definition.

***sheriff's officer uniform*** means the uniform of a sheriff's officer, and includes—

- (a) any parts of such a uniform (or any accoutrements of a sheriff's officer) that are generally recognised as parts of the uniform or accoutrements of a sheriff's officer, or
- (b) any reasonable imitation of such a uniform, parts of a uniform or accoutrements.

***use*** of sheriff's insignia includes use of a reproduction or representation of sheriff's insignia.

## **11 Use of word "sheriff" in operating name**

- (1) A person who carries on any activity under an operating name that includes the word "sheriff" is guilty of an offence.

Maximum penalty—100 penalty units.

- (2) If an activity is carried on in contravention of subsection (1) in the name of a firm (that is, a partnership or other unincorporated body of persons), any person who is a member of the governing body of the firm is guilty of an offence under that subsection if the person knowingly authorised or permitted the contravention.
- (3) This section does not prevent a person or body of persons from doing anything in accordance with the terms of a consent in force under section 12.
- (4) This section does not apply to any body or class of bodies that is declared by the regulations to be a body or class of bodies to which this section does not apply.
- (5) In this section, **operating name** includes any name, style, title or designation under which a person or body carries on an activity, any name under which an association is incorporated under the [Associations Incorporation Act 2009](#) and any business name registered under the [Business Names Registration Act 2011](#) of the Commonwealth in relation to a person, but does not include—
  - (a) in the case of an individual, the individual's family name, either alone or together with—
    - (i) one or more of the individual's given names, or
    - (ii) one or more of the initials of the individual's given names, or
    - (iii) a combination of one or more of the individual's given names and one or more of the initials of the individual's remaining given names, or
  - (b) in the case of a corporation, the corporation's corporate name, or
  - (c) in the case of an industrial organisation registered under the [Industrial Relations Act 1996](#), the name under which the industrial organisation is registered, or
  - (d) in the case of any other statutory body, the name under which the body is incorporated, constituted or established.
- (6) The provisions of this section and section 12 are intended to operate as referred to in sections 12 (2) (b) and (e), 19 (5) and 20 (3) of the [Business Names Registration Act 2011](#) of the Commonwealth.

**Note—**

Section 12 (2) (b) and (e) of the [Business Names Registration Act 2011](#) of the Commonwealth (the **Commonwealth Act**) provide that the business names legislation referred to in that section is not intended to exclude or limit the concurrent operation of a law of a State that—

- (a) prohibits or restricts the use of a word or expression by an entity or class of entities, or
- (b) imposes obligations on an entity or class of entities that are in addition to obligations imposed under

that Act.

Sections 19 (5) and 20 (3) of the Commonwealth Act also provide that an entity does not commit an offence under those sections concerning the inclusion or display of registered business names in written communications and at places of business if the inclusion, use or display of a business name in such a communication or at such a place would be contrary to a law of a State.

## **12 Consents for the purposes of section 11**

- (1) The Sheriff may grant consent to any person or body of persons to carry on any activity under an operating name (within the meaning of section 11) that includes the word “sheriff”, either unconditionally or subject to such conditions as the Sheriff considers appropriate to impose on the consent.
- (2) A consent may be revoked by the Sheriff at any time.
- (3) In deciding whether or not to grant or revoke a consent, the Sheriff must have regard to such matters (if any) as are prescribed by the regulations.
- (4) Before revoking a consent, the Sheriff—
  - (a) must serve notice of the proposed revocation on the person or body of persons having the benefit of the consent, and
  - (b) must allow that person or body at least 14 days within which to make submissions with respect to the proposed revocation, and
  - (c) must have regard to any submissions that are duly made with respect to the proposed revocation.
- (5) As soon as practicable after revoking a consent, the Sheriff must cause notice of that fact to be given—
  - (a) to the person or body of persons concerned, and
  - (b) if the consent relates to the name under which an association is incorporated under the [Associations Incorporation Act 2009](#)—to the Secretary of the Department of Finance, Services and Innovation, and
  - (c) if the consent relates to a business name registered under the [Business Names Registration Act 2011](#) of the Commonwealth—the Australian Securities and Investments Commission.

### **Note—**

In the case of the name under which an association is incorporated under the [Associations Incorporation Act 2009](#), notification of the Secretary of the Department of Finance, Services and Innovation will prompt the Secretary to exercise his or her powers under that Act to direct the association to change its name.

- (6) A consent that is revoked ceases to have effect—

- (a) except as provided by paragraph (b)—
    - (i) at the end of 28 days after notice of the revocation is served on the person or body of persons concerned, or
    - (ii) at such later time as may be specified in the notice of revocation, or
  - (b) in the case of a consent that relates to the name under which an association is incorporated under the [Associations Incorporation Act 2009](#)—
    - (i) on the date on which the Secretary of the Department of Finance, Services and Innovation issues a certificate of incorporation in respect of the association's new name under section 12 (3) of that Act, or
    - (ii) on the date on which the Secretary of the Department of Finance, Services and Innovation cancels the association's incorporation under section 76 of that Act, as the case may be.
- (7) In this section, a reference to the Secretary of the Department of Finance, Services and Innovation is, while the position of Commissioner for Fair Trading exists in that Department, to be read as a reference to the Commissioner.

### **13 Certificate of authority to be carried**

At all times while exercising the Sheriff's functions a person must carry, and produce on demand, a certificate of identification in the form prescribed by the regulations.

Maximum penalty—5 penalty units.

## **Part 4 Miscellaneous**

### **13A Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

### **14 Process serving**

For the purpose of exercising the Sheriff's functions, the Sheriff and sheriff's officers are exempt from the requirement for a licence under the [Commercial Agents and Private Inquiry Agents Act 2004](#) in relation to the service of court process.

### **15 Exclusion of liability**

An act or omission of the Sheriff, the Sheriff's alternate, a sheriff's officer or any other person acting under the direction of the Sheriff or a sheriff's officer does not subject the Sheriff, Sheriff's alternate, sheriff's officer or person so acting personally to any action, liability, claim or demand if the act or omission was done, or omitted to be done, in good

faith for the purpose of executing this Act.

## **16 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 create an offence punishable by a penalty not exceeding 50 penalty units.

## **17 Repeals, amendments and savings provisions**

- (1) The *Sheriff Act 1900* is repealed.
- (2) (Repealed)
- (3) Schedule 2 has effect.

## **18 Abrogation of provisions of Charter of Justice**

- (1) Such of the provisions of the *Charter of Justice* as provide for the appointment of persons to the office of Sheriff, or to the appointment of Sheriff's deputies, cease to have effect.
- (2) Subsection (1) does not limit or otherwise affect any function exercisable by the Sheriff under or by virtue of the *Charter of Justice*.

## **19 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 (Repealed)**

## Schedule 2 Savings, transitional and other provisions

(Section 17 (3))

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—  
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Definition

In this Part—

**the former Act** means the *Sheriff Act 1900*, as in force immediately before its repeal by this Act.

#### 3 Sheriff and sheriff's officers

- (1) The person holding office as Sheriff immediately before the commencement of this Act does not cease to hold office simply because of the enactment of this Act.
- (2) Any person holding office as a sheriff's officer immediately before the commencement of this Act does not cease to hold office simply because of the enactment of this Act.

#### 4 Sureties under former Act

Any bond, recognisance or surety that, immediately before the commencement of this Act, was in force under section 4 of the former Act continues to have effect and may be enforced accordingly.

## **5 Service of process under former Act**

The repeal of the former Act does not invalidate the service of any judgment, order, pleading, affidavit, notice or other document that was served in accordance with section 8A of that Act before the commencement of this Act.

## **6 (Repealed)**

## **7 References to former Act**

In any Act or instrument, a reference to the former Act extends to this Act.

## **Part 3 Provision consequent on enactment of [Business Names \(Commonwealth Powers\) Act 2011](#)**

## **8 Continuation of existing consents under section 12**

Any consent in force under section 12 immediately before the commencement of Schedule 3.19 to the [Business Names \(Commonwealth Powers\) Act 2011](#) continues in force until such time as it is revoked under that section (as amended).