



THE LAW SOCIETY  
OF NEW SOUTH WALES

## SEARCH ORDERS

# GUIDELINES FOR THE APPLICANT'S SOLICITOR

Search Orders (also known as Anton Piller Orders) are orders that may be made by the Supreme Courts, Courts of Appeal, Federal Circuit Court and Federal Court to preserve evidence pending the hearing of an applicant's claim in a proceeding against the respondent to the orders, or another person.

The order is an extraordinary remedy: it is intrusive and disruptive to the respondent and made ex parte. For these reasons such orders are rarely made, and only where the Court is satisfied that they are necessary and appropriate for the preservation of important evidence that might otherwise be destroyed or compromised.

In all such applications, an independent solicitor is appointed by the Court to safeguard against abuse of the order.

The independent solicitor's role is to supervise the search for evidence that is the subject of the orders.

The independent solicitor should be a solicitor who is experienced in commercial litigation, especially in the execution of search orders. They must also not be a member or employee of the applicant's legal firm and should not be connected in any way to the applicant or respondent.

It is not the role of the independent solicitor to give legal advice to the applicant or the respondent, nor to conduct the search.

In support of the independent solicitor's role the applicant's solicitor should:

- take all available steps to clearly ascertain the location and composition of the premises to be searched. At a minimum this includes obtaining the address but may also include a GPS location, property search and/or Google Earth photographs;
- identify whether the property to be searched are private or business premises;
- at the time of applying for the Search Orders advise, or seek guidance from, the Court as to the proposed steps if there are likely to be school-aged children in the premises on execution of the Search Orders;
- try to arrange for a transcript of the hearing of the ex parte application to be made, and be made available to all parties prior to the return date of the Search Orders made;
- ensure that the independent solicitor is fully briefed in relation to the premises, respondent and the occupants of the premises;
- ensure that any meeting or briefing with the independent expert prior to execution of the Search Orders takes place in a neutral location. Further, the independent solicitor should not travel with you to the premises on the day of the search;
- provide the independent solicitor with copies of the draft Court documents with as much notice of the application as possible; and
- ensure that there are sufficient copies of all Court documents as filed to enable the independent solicitor to effect service.