



THE LAW SOCIETY
OF NEW SOUTH WALES

SEARCH ORDERS GUIDELINES FOR THE RESPONDENT

You have been served with Search Orders.

These guidelines have been prepared to assist you to comply with the Search Orders.

Underlined words are explained at the end of this document.

The Search Orders have been made to preserve important evidence pending the hearing and determination of a claim that has been made by the Applicant in a case against

[Name of Respondent or party]

in the

[Name of Court]

These Search Orders require that, except for the sole purpose of obtaining legal advice you must not, until 4:30pm on the return date directly or indirectly tell anyone of this case or of the contents of these Search Orders, or tell anyone that a case has been or may be brought against you by the Applicant.

If you breach any of your obligations under the Search Orders you will be liable to imprisonment, seizure of property or other punishment.

Any other person who knows of these Search Orders and does anything which helps or permits you to breach them may be similarly punished.

The independent solicitor

You have been served with these Search Orders by a solicitor who is independent of the Applicant. That is, they are neither connected to, nor a representative of, the Applicant. The independent solicitor is appointed by the Court to:

- serve the Search Orders and the documents that the Applicant provided to the Court in applying for those Orders to be made;
- offer to explain to you and, if the offer is accepted, to explain the terms of the Search Orders to you;
- supervise the search regarding which the Search Orders have been made;
- identify things found by the search that are covered by the Search Orders and, before removing these things from the premises, make a list of them and allow you a reasonable opportunity to check the list;
- provide you with a copy of the list;
- submit a written report about the search to the Court;
- at or prior to the hearing on the return date of the application, deliver to the Court all things received from the independent computer expert and serve a copy of that expert's report on the parties; and
- attend Court on the return date and have available to be brought to Court all of the things that may be removed from the premises as a result of the search.



The search party

The search party consists of an independent computer expert and the Applicant's solicitor/s.

Neither the Applicant nor the Applicant's solicitor is permitted, without leave of the Court, to inspect anything that may be removed from the premises at the end of the search, or to be given any information about them by the search party.

The independent computer expert has been chosen by the Applicant but is independent of the Applicant and the Applicant's solicitors. They are in attendance to:

- search any and all computers and other electronic devices on the premises;
- make a copy or digital copy of the hard drive of each device and remove that copy from the premises;
- search the device, or the copy or digital copy of the device hard drive, for listed things at the premises and/or away from the premises;
- copy the listed things electronically or in hard copy or both; and
- as soon as practicable and, in any event, prior to the hearing on the return date, deliver to the independent solicitor:
 - the copy or digital copy of the device hard drive and all electronic and hard copies of listed things; and
 - a report of what they have done including a list of such electronic and hard copies.

Your rights

You are not required to permit anyone to enter the premises until:

- you have been given an opportunity to read the Search Orders and, if you so request, the independent solicitor explains its terms to you;
- you have had time (not more than 2 hours from the time of service or such longer period as the independent solicitor may permit) to:
 - seek legal advice;
 - ask the Court to vary or discharge the Search Orders;
- [note: provided that the Respondent is not a corporation] gather together any things which you believe may tend to incriminate you or make you liable to a civil penalty and hand them to the independent solicitor in a sealed envelope or container; and
- gather together any documents that have passed between you and your lawyers for the purpose of obtaining legal advice or that are otherwise subject to legal professional privilege or client legal privilege, and hand them to the independent solicitor in (if you wish) a sealed envelope or container.

Prior to the return date, you or your representative may, in the presence of the independent solicitor, inspect anything removed from the premises and:

- make copies of them; and
- give the independent solicitor a signed list of things which are claimed to be privileged or confidential and which you claim ought not to be inspected by the Applicant.



Privilege against self-incrimination and legal professional privilege

You may claim privilege over documents which may tend to incriminate you or which are subject to legal professional privilege.

Self-incrimination

The common law privilege against self-incrimination entitles a person to refuse to answer any question, or produce any document, if to do so would tend to incriminate them.

In addition, if a person chooses or is compelled to give evidence of matters that 'may tend to prove' that they have committed an offence under Australian or foreign law, or are liable to a civil penalty, and makes a claim for privilege against self-incrimination that is successfully upheld by the Court, a respondent to a Search Order will be entitled to a certificate from the Court that grants that person immunity in relation to the evidence (except in criminal proceedings in respect of the falsity of the evidence).

If the Search Orders cover material that includes information that could expose you to the possibility of a criminal charge, a fine or disqualification of office - such as a company directorship - you may make a claim for privilege.

Client legal privilege and legal professional privilege

This privilege protects information that comprises confidential communications between a lawyer and their client - such as advice given by a lawyer to their client - from disclosure to third parties and the Court.

You may claim privilege for any such material that is identified as part of the search. The Applicant may dispute the claim and, if so, the Court will decide whether the claim should be upheld.

Your obligations

Once served with Court documents you must:

- inform and keep the independent solicitor informed of the steps you take to obtain legal advice;
- permit the independent solicitor to enter the premises but not to authorise the start of the search;
- not disturb or remove any things listed in the Search Orders; and
- if there is anything that is the subject of dispute as to whether it falls within the scope of the Orders, hand it to the independent solicitor for safekeeping pending resolution of the dispute or further order of the Court.

Having permitted members of the search party to enter the premises you must:

- permit them to leave and re-enter the premises on the same and the following day until the search and other activities referred to in the Search Orders are complete;
- permit them to search for and inspect the things listed in the Search Orders and to make or obtain a copy, photograph, film, sample, test or other record of the things listed;
- disclose to them the whereabouts of all the things listed that are in your possession, custody or power, whether at the premises or otherwise;
- disclose to them the whereabouts of all computers, information storage devices and/or systems at the premises in which any documents among the things listed are or may be stored, and cause and permit those documents to be printed;
- do all things necessary to enable them to access the listed things, including opening or providing keys to locks and enabling them to access and operate electronic devices and providing them with all necessary passwords;



- permit the independent solicitor to remove from the premises into their custody:
 - the listed things, or things which reasonably appear to the independent solicitor to be listed things, and any things the subject of dispute as to whether they are listed things;
 - the copies, photographs, films, samples, tests, other records and printed documents referred to above; and
 - all hard drives and computers, and other electronic devices
- permit the independent computer expert (if there is one) to:
 - search all computers and other electronic devices;
 - make a copy or digital copy of the computer hard drives;
 - remove any hard drive from the premises into their custody;
 - search all electronic devices and copies or digital copies of them at the premises and/or away from the premises for listed things; and
 - copy the listed things electronically or in hard copy or both.

At or before the further hearing on the return date (or within such further time as the Court may allow) you must:

- inform the Applicant's solicitor in writing, to the best of your ability, as to:
 - the name and address of everyone who has supplied you, or offered to supply you, with any listed thing;
 - the name and address of every person to whom you have supplied, or offered to supply, any listed thing;
 - the dates and quantities of every such supply and offer;

- within

working days after being served with the Search Orders, make and serve on the Applicant's solicitor an affidavit setting out the above information.

Until 4:30pm on the return date you must not destroy, tamper with, cancel or part with possession, power, custody or control of the listed things otherwise than in accordance with the terms of the Search Orders or further Order of the Court.

Terms

[Applicant]

[Applicant's solicitor]

Listed things are described in Schedule B to the Search Orders

Premises is described in Schedule B to the Search Orders

Return date is the date of the Court hearing that is set out in the Search Orders. At that hearing the judge will be given a report of the search and will make further orders for the next steps in the case.

Sequestration is an order made by the Court for seizure of property