

# SEARCH ORDERS – LIST OF INDEPENDENT SOLICITORS

## INFORMATION AND EXPRESSION OF INTEREST FORM

### The role of the independent solicitor

Under harmonised Rules and Practice Notes, State Courts of Appeal, Supreme Courts, the Federal Court and Federal Circuit Court have the power to make urgent, ex parte orders for search and removal of material for the purpose of securing or preserving evidence. These are known as Search Orders (formerly known as Anton Piller Orders after *Anton Piller KG v Manufacturing Processes Ltd [1976] Ch 55*).

The harmonised Practice Note currently states

The independent solicitor is an important safeguard against abuse of the order. The independent solicitor must not be a member or employee of the applicant's firm of solicitors. The independent solicitor should be a solicitor experienced in commercial litigation, preferably in the execution of search orders. The NSW Law Society has been requested to maintain a list of solicitors who have indicated willingness to be appointed as an independent solicitor for the purpose of executing search orders, but it is not only persons on such a list who may be appointed. The responsibilities of the independent solicitor are important and ordinarily include the following:

- (a) serve the order, the notice of motion applying for the order (if applicable), the affidavits relied on in support of the application, and the originating process;
- (b) offer to explain, and, if the offer is accepted, explain the terms of the search order to the respondent;
- (c) explain to the respondent that he or she has the right to obtain legal advice;
- (d) supervise the carrying out of the order;
- (e) before removing things from the premises, make a list of them, allow the respondent a reasonable opportunity to check the correctness of the list, sign the list, and provide the parties with a copy of the list;
- (f) take custody of all things removed from the premises until further order of the Court;
- (g) if the independent solicitor considers it necessary to remove a computer from the premises for safekeeping or for the purpose of copying its contents electronically or printing out information in documentary form, remove the computer from the premises for that purpose, and return the computer to the premises within any time prescribed by the order together with a list of any documents that have been copied or printed out;
- (h) submit a written report to the Court within the time prescribed by the order as to the execution of the order; and
- (i) attend the hearing on the return day of the application, and have available to be brought to the Court all things that were removed from the premises. On the return day the independent solicitor may be required to release material in his or her custody which has been removed from the respondent's premises or to provide information to the Court, and may raise any issue before the Court as to execution of the order.<sup>1</sup>

The Law Society has published guidance to assist the parties and the independent solicitor, who is appointed by the Court to supervise the search for evidence that is the subject of the Search Order. That guidance is available at:

<https://www.lawsociety.com.au/resources/areasoflaw/courtsandlitigation/index.htm>.

<sup>1</sup> Supreme Court of NSW, Practice Note SC Gen 13, [11]; Federal Court of Australia, Practice Note GPN-SRCH, [2.11].



# SEARCH ORDERS – LIST OF INDEPENDENT SOLICITORS

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### List of solicitors willing to be appointed as an independent solicitor

In accordance with the harmonised Practice Note, the Law Society is preparing a list of solicitors who are willing to be appointed as an independent solicitor in the execution of search orders. The list is intended to assist practitioners in identifying appropriate solicitors who are willing to perform the role. Parties may suggest, and the courts may appoint, solicitors who are not on the list.

The Law Society's list of solicitors willing to act as an independent solicitor will be available to parties upon request from the Policy and Practice Department.

### Requirements for inclusion on the list

Solicitors seeking to be included on the Law Society's list of independent solicitors must meet the following requirements:

- Hold a current Practising Certificate (or interstate equivalent) that does not contain a condition requiring supervision, and professional indemnity insurance as required by the Legal Profession Uniform Law;
- Have a minimum of ten (10) years' post-admission experience;
- Be accredited as a specialist in commercial litigation or have a minimum of five (5) years' experience in commercial litigation; and
- Attend a familiarisation course conducted by the Law Society.

Proof of qualifications and experience will be required.

Expressions of interest will be determined by the President and the Chief Executive Officer of the Law Society of NSW.

Successful applicants will be appointed to the list for two years.

Appointment will lapse automatically if the solicitor ceases to hold a Practising Certificate, or has a condition imposed requiring supervision.

In order to be appointed to the list, a solicitor must not be subject to a current complaint and not have had a disciplinary finding against them in the last five years. If any adverse disciplinary findings are made against a solicitor who has been appointed to the list of independent solicitors, that solicitor is required to inform the relevant Law Society officer and may be removed from the list.

### Expressions of interest

Solicitors who wish to express interest in being included on the Law Society's list of independent solicitors should complete the attached form and submit it to:

[litigationcommittee@lawsociety.com.au](mailto:litigationcommittee@lawsociety.com.au).

Any inquiries regarding this application should be directed to:

[litigationcommittee@lawsociety.com.au](mailto:litigationcommittee@lawsociety.com.au).

### Privacy

The Law Society of New South Wales respects your privacy and the confidentiality and security of personal information provided by you to us. The information provided by you to the Law Society on this form will be used by the Law Society for the purposes of considering your expression of interest and, should you be included on the list, the contact information that you provide will be provided to those who request a copy of the list from the Law Society, in accordance with our [Personal Information Collection Notice](#).



# SEARCH ORDERS – LIST OF INDEPENDENT SOLICITORS

## INFORMATION AND EXPRESSION OF INTEREST FORM

### Expressions of interest to appear on the list of independent solicitors

This form is for practising solicitors who seek to be included on the Law Society's list of solicitors willing to be appointed as an independent solicitor for the purpose of supervising the execution of a search order.

The appointment of an independent solicitor in any particular matter is a matter for the court. Judges may appoint any practitioner they consider appropriate, whether or not the practitioner appears on the Law Society's list.

### Applicant Details

Full Name:		
Address for Correspondence:		
Date of Admission:		
Firm/Practice Name:		
Firm/Practice Address:		
Email:		
Telephone:	(work)	(mobile)

I confirm that I have a minimum of ten (10) years practice as a solicitor, as demonstrated by my attached CV.

I confirm that I am accredited as a specialist in commercial litigation or have a minimum of five (5) years' experience in commercial litigation.

I confirm that I hold a current Practising Certificate (or interstate equivalent) that does not contain a condition requiring supervision, and professional indemnity insurance as required by the Legal Profession Uniform Law.

I confirm that I have read the [Personal Information Collection Notice](#) before submitting this form.

**By submitting this expression of interest to be included on the Law Society's list of solicitors willing to act as an independent solicitor for the purpose of supervising the execution of a search order I confirm that:**

I will attend a familiarisation course run by the Law Society of NSW.

I will advise the relevant Law Society officer within 7 days if any adverse disciplinary findings are made against me once I am included on the list.

I authorise the Professional Standards Department of the Law Society of New South Wales and the Legal Services Commissioner to advise and release to the relevant Law Society Officer any adverse disciplinary findings that may be made against me at any time.



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### DECLARATION

I declare that the information and particulars set out in this application are true and correct to the best of my knowledge.

Signed:

Signed:	
Name:	
Date:	