

**Report under section 242(3) of  
the *Law Enforcement (Powers  
and Responsibilities) Act 2002***

**for the period ending 7 August 2015  
Criminal Organisations Search Warrants**

**October 2015**



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# 1. Introduction

Amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) (the Act) relating to some specific search powers came into force in August 2009. The amendments enable the NSW Police Force to apply to eligible judicial officers of the Supreme Court for 'criminal organisation search warrants'. A criminal organisation search warrant is defined as a search warrant issued under Division 2 of Part 5 of the Act, in relation to an organised crime offence.

## 1.1 Purpose of Criminal Organisation Search Warrants

A police officer, who is authorised by a police officer holding the rank of Superintendent or above, may apply for a criminal organisation search warrant. The authorisation may be given if the authorising person suspects on reasonable grounds that there is, or within 7 days there will be in-or-on premises, a thing of a kind connected with the searchable offence.

A '**searchable offence**' is defined in section 46A of the Act as, in so far as it relates to a criminal organisation search warrant, as an '**organised crime offence**'.

An '**organised crime offence**' means any serious indictable offence arising from, or occurring as a result of, 'organised criminal activity' as defined in section 46AA of the Act as follows:

- 1) In this Part: '**organised criminal activity**' means any activity that:
  - (a) is carried out on an organised basis, and
  - (b) is carried out to advance any one or more of the following objectives:
    - (i) obtaining material benefits from conduct constituting a serious indictable offence,
    - (ii) obtaining material benefits from conduct engaged in outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious indictable offence,
    - (iii) committing serious violence offences,
    - (iv) (engaging in conduct outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious violence offence.

'**serious violence offence**' means an offence punishable by imprisonment for life or for a term of 10 years or more, where the conduct constituting the offence involves:

- (a) loss of a person's life or serious risk of loss of a person's life, or
  - (b) serious injury to a person or serious risk of serious injury to a person, or
  - (c) serious damage to property in circumstances endangering the safety of any person, or
  - (d) perverting the course of justice (within the meaning of Part 7 of the *Crimes Act 1900*) in relation to any conduct that, if proved, would constitute a serious violence offence as referred to in paragraph (a), (b) or (c).
- 2) For the purposes of this section, an activity is carried out on an '**organised basis**' if it is planned, organised, structured or otherwise carried out in such a manner as to indicate that the activity is carried out on more than one occasion and involves more than one participant.

A '**serious indictable offence**' means an indictable offence that is punishable by imprisonment for life, or for a term of 5 years or more.

## 1.2 Application Process

A Judge of the Supreme Court may consent to being nominated by the Attorney General as an eligible judge. If consent is given, the Attorney General may then declare those judges to be 'eligible judges' under the Act. This declaration must be made in writing.

If an eligible applicant has reasonable grounds to suspect that there is, or within 7 days there will be, in or on nominated premises a thing connected with a searchable offence, they may apply to an eligible issuing officer for a criminal organisation search warrant in respect of the premises.

The Act also provides for applications to be made by telephone where the eligible issuing officer is satisfied that the warrant is required urgently and the application cannot be made in person.

Applications are made using the form prescribed in the Law Enforcement (Powers and Responsibilities) Regulation 2005, (Form 1B). The form contains all the relevant information which section 62 of the Act requires to be considered for a search warrant application – and in particular the requirements of section 62(2A) which are specifically related to criminal organisation search warrants.

The Regulation also prescribes the form of the warrant (Form 9B), and the occupiers notice (Form 17C). These forms cover the criteria set out in section 66 and section 67 of the Act in relation to these documents.

The time specified for the expiry of a criminal organisation search warrant is the date that is 7 days after the date on which the warrant is issued.

## 1.3 Reporting Requirements

The reporting requirements for a criminal organisation search warrant are the same as those for standard search warrants, which are set out in section 74 of the Act. The report must be furnished to the eligible issuing officer within 10 days after the execution of the warrant or the expiry of the warrant, whichever occurs first. The report must comply with Form 20 of the Regulation.

## 1.4 Role of the Ombudsman

To provide external oversight of the use of these powers, the NSW Ombudsman is required to inspect the records of the NSW Police Force to check on their compliance, and the compliance of their officers, with Part 5 of the Act. Inspections must take place at least every 2 years.

Section 242(3A) of the Act commenced on 7 August 2009 and the Ombudsman is required to furnish a report to the Attorney General and the Minister for Police as soon as practicable after the expiration of each 2 years following the commencement of section 242(3A). The Minister is required by section 242(4) to lay the report, or cause the report to be laid, before both Houses of Parliament as soon as practicable after receiving the report.

This report is for the period 7 August 2013 until 7 August 2015; it is the Ombudsman's third report on this inspection function.

## 1.5 Scope of an Inspection

The Ombudsman inspects each individual criminal organisation search warrant file at the Covert Applications Unit at the Sydney Police Centre. The inspection involves an examination of the application, warrant, occupiers notice and report to the issuing judicial officer, and any other information contained on the file.

Each inspection involves checking:

- the applicant is authorised to apply for the criminal organisation search warrant (s.46D)
- the application is in the form prescribed by the regulations and is made in person by the applicant (s.60)
- the application contains the information required by s.62 and in particular s.62(2A)
- the warrant is in the form prescribed by the regulation [Form 9B]
- the warrant fulfils the requirements of s.66, which includes detailed information about the premises, the occupant and their likely involvement in the searchable offence

- the occupiers notice is in the form prescribed by the regulation [Form 17B]
- the occupiers notice contains the particulars specified in s.67(2) to provide the occupier with sufficient information about the warrant
- the report on execution of the criminal organisation search warrant is in the form prescribed by the regulation [Form 20] and contains the particulars specified in s.74
- the report was provided to the eligible issuing officer within 10 days after the execution of the warrant or the expiry – whichever first occurs.

The inspection also includes examining records relating to the execution of criminal organisation search warrants and the records relating to entry and seizures so the accuracy of the reports to the issuing judge can be ascertained.

## **1.6 Inspection detail**

In the case of the NSW Police Force the records are located at Covert Applications Unit, Sydney Police Centre, Surry Hills and were inspected in July and August 2015.

## 2. Inspection results

During the reporting period 72 criminal organisation search warrant files were inspected, COSW13/034 to CSW15/008. Of these, 67 applications proceeded to the eligible judge and warrants were granted. Five prospective warrants were cancelled prior to application.

### 2.1 Applications

There were 67 criminal organisation search warrant applications made during the reporting period. All were granted and warrants issued. There were no telephone applications made.

### 2.2 Warrants

In relation to the 67 warrants granted; twenty eight targeted drug offences and dealing with proceeds of crime, twelve targeted drug offences, proceeds of crime and participate in a criminal group, nine operations targeted drug offences, eight targeted money laundering offences, six targeted drug offences and money laundering, two targeted drug and firearms offences, two targeted drug and fraud offences, proceeds of crime and participate in a criminal group.

The warrants were issued to the following squads within NSW Police Force State Crime Command:

- 36 warrants were issued to the Organised Crime (Targeting) Squad
- 14 warrants were issued to the Middle Eastern Organised Crime Squad
- 8 warrants were issued to the Central Metropolitan Region Enforcement Squad
- 6 warrants were issued to the Macquarie Fields Local Area Command
- 3 warrants were issued to the Fairfield Local Area Command.

Forty nine warrants were executed and items were seized, eighteen warrants were not executed for varying operational reasons.

Items seized included suspected prohibited drugs, mobile phones, knives, batons, replica firearms, handcuffs, sim cards, currency, documents, laptops, drug paraphernalia, credit cards, passports, tablet pressing machines, motor vehicles, Taser, safes, hard drives, storage media and clothing.

### 2.3 Exceptions or issues identified

There appeared to be some general confusion in relation to the completion of details about the execution of the warrant in the report (Form 20). The instructions in Form 20 clearly state that Section 3 of the report is 'to be completed **unless 4 applies**'. Section 4 is 'to be completed **if the warrant authorised the use of a drug dog for general drug detection**'.

We found the Form 20 reports for the following warrants included details in both Section 3 and 4:

13/034, 13/035, 13/036, 13/037, 13/038, 13/039, 13/040, 13/041, 13/042, 13/043, 13/044, 13/045, 13/048, 13/049, 13/050, 13/051, 13/056, 13/057, 13/058, 13/059, 13/060, 13/061, and 13/062.

In many cases the time specified at Section 3 was inconsistent with the time specified at Section 4. For example, one report indicated the warrant was executed at 4.15pm. (*Note 2 of the Form 20 indicates 'specify time at which execution of warrant was completed.'*) Section 4 of the same report indicated a period from 6am to 9pm, which appeared to refer to the time period which the warrant was authorised to be executed i.e. by day or night and not the actual time the warrant was executed.

The other general error which occurred regularly on these warrants was at Section 6 which requires the report to specify that the things seized are now in the custody of a specified person or persons. Note 5 of Form 20 states: *Specify the person who has responsibility for the safekeeping of the things seized. Specify the place where the things are held unless specifying the place they are held would adversely affect the security of the things seized.*

On the following warrants; 13/034 to 13/045, 13/048 to 13/051, 14/001, 14/009 to 14/014, 14/016 to 14/019 and 14/021 to 14/029, Section 6 of the Report included the place where things were held, but did not specify the person who has responsibility for the safekeeping of the things seized. For example, some warrants stated 'NSW Police Force', or the name of the relevant Local Area Command. Correct reports specified items were held, for example, with '[name of relevant LAC] exhibits officer'.

## 2.4 Concluding comments

The NSW Police Force was not compliant with Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* in so far as it related to those issues discussed above in relation to criminal organisation search warrants.

Each of the exceptions identified at inspection were raised with the Commissioner of Police and we have been advised of actions proposed to be taken to ensure as far as possible similar oversights – which appear administrative in nature – do not continue to occur. Specifically the actions include:

- Further training in the accurate completion of these standard forms.
- Appropriate checking of completed forms prior to being presented to the Eligible Judge.

These actions appear appropriate to remedy the issues.



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