



Office of the Inspector of the
Law Enforcement Conduct Commission

**Report under Section 242(6) of the
*Law Enforcement (Powers and
Responsibilities) Act 2002* – Criminal
Organisation Search Warrants - for
the period from 7 August 2015 to 6
August 2017**

October 2017

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Legislative Changes

Transfer of responsibility to the Inspector of the Law Enforcement Conduct

Commission

Following the introduction by the Government of legislative changes to civilian oversight of law enforcement agencies in NSW, the Office of the Inspector of the Law Enforcement Conduct Commission (Inspector of LECC) was created. The functions previously carried out by the NSW Ombudsman under the *Law Enforcement (Powers and Responsibilities) Act 2002* (the Act) were transferred to the Inspector of the Law Enforcement Conduct Commission in transitional provisions. Those legislative changes came into effect on 1 July 2017. As from that date, the Inspector has taken possession of all relevant information, documents and records previously held by the Ombudsman in relation to this function and has also taken over the Ombudsman's work in progress.

For the purposes of this report, inspections conducted prior to 1 July 2017 were performed by the NSW Ombudsman. From 1 July 2017, the responsibility for inspections was conferred upon the Inspector of LECC. Amendments to the LECC Act which came into effect on 25 September 2017 enabled the Inspector to delegate those functions to nominated members of staff. Appropriate delegations are now in existence.

This report is submitted to the Attorney General and the Minister for Police in accordance with section 242(6) of the Act. The report details the results of inspections conducted of agency records covering the period from 7 August 2015 to 6 August 2017. The Inspector of LECC is authorised by the transitional provisions in Schedule 3 to the *Law Enforcement Conduct Commission Act, 2016* (the LECC Act) to assume responsibility for the preparation of this report.

Chapter 1. Introduction

Amendments to the Act relating to 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 a “*criminal organisation search warrant*”, which is defined in section 3 of the Act as “*a search warrant issued under Division 2 of Part 5 in relation to an organised crime offence*”.

1.1 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 the 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, an “*organised crime offence*”.

An “*organised crime offence*” is defined as “*any serious indictable offence arising from, or occurring as a result of, organised criminal activity*”.

Section 46AA of the Act provides that:

(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

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. Under the Act an *eligible issuing officer* for the purposes of a criminal organisation search warrant means an *eligible judge*.

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

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 3). 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 13) and the occupier's notice (Form 24). 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 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 27 of the Regulation.

1.4 Role of the Inspector of LECC

From 1 July 2017 the Inspector of LECC has taken over responsibility for the requirement to inspect the records of the NSW Police Force to check for compliance with Part 5 of the Act. Inspections must take place at least every 2 years.

From 1 July 2017 the Inspector of LECC has also taken over responsibility for the requirement 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(4). The Minister is required by section 242(7) 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 provided pursuant to s.242(6) of the Act and covers the period 7 August 2015 to 6 August 2017.

1.5 Scope of an Inspection

Inspecting officers inspected each individual criminal organisation search warrant file at the NSW Police Force Covert Applications Unit. Inspections were conducted in November 2016, May 2017 and September 2017. The inspections involved an examination of the application, the warrant itself, the occupier's notice, the report to the issuing judicial officer and any other information contained on the file.

Each inspection involved checking that:

- the applicant was authorised to apply for the criminal organisation search warrant (s.46D)
- the application was in the form prescribed by the regulations [Form 3] and was made in person by the applicant (s.60)
- the application contained the information required by s.62 and in particular s.62(2A)
- the warrant was in the form prescribed by the regulation [Form 13]
- the warrant fulfilled the requirements of s.66, which included detailed information about the premises, the occupant and their likely involvement in the searchable offence
- the occupier's notice was in the form prescribed by the regulation [Form 24]
- the occupier's notice contained the particulars specified in s.67(2) so as to provide the occupier with sufficient information about the warrant
- the report on execution of the criminal organisation search warrant was in the form prescribed by the regulation [Form 27] and contained 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 of the warrant, whichever occurred first.

In a further endeavour to ensure that the statutory requirements have been complied with, inspections were also conducted on occasions to examine other records which were held by the agency relating to the execution of criminal organisation search warrants.

Chapter 2. Inspection results

During the reporting period 78 criminal organisation search warrant files were inspected, identified as being files COSW15/009 to COSW17/030.

2.1 Applications

There were 78 criminal organisation search warrant applications made during the reporting period. Five prospective warrants were not proceeded with. 73 applications proceeded to the eligible judge and warrants were issued in respect of each of those applications.

There were no telephone applications made during the reporting period.

2.2 Warrants

Of the 73 warrants issued:

- 24 related to importation of illegal tobacco, proceeds of crime and participate in criminal group
- 17 related to participate in criminal group
- 15 related to drug offences, dealing with proceeds of crime and participate in criminal group
- 11 related to drug offences and participate in a criminal group
- 3 related to dealing with proceeds of crime and murder
- 2 related to drug offences
- 1 related to drug offences and proceeds of crime.

The 73 warrants were issued to the following squads within NSW Police Force State Crime Command:

- 27 warrants were issued to the Middle Eastern Organised Crime Squad
- 24 warrants were issued to the State Crime Command Gangs Squad
- 20 warrants were issued to State Crime Command Drug Squad
- 2 warrants were issued to the Surry Hills Region Enforcement Squad

Of the 73 warrants, 7 were not executed for various operational reasons. Items were seized in relation to the remaining 66 warrants which were executed.

Items seized included suspected prohibited drugs, mobile phones, knives, firearms, ammunition, handcuffs, sim cards, currency, documents, laptops, drug paraphernalia, tobacco, illegal cigarettes, credit cards, passports, tablet pressing machines, motor vehicles, a bow and arrow, a safe, hard drives, storage media and clothing.

2.3 Exceptions or issues identified

Reference was made earlier to the requirement to complete details in compliance with Form 27. Item 7 of Form 27 is in the following terms: *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.*

Inspections revealed that there was still non-compliance with the completion of item 7. This was highlighted as an issue in the NSW Ombudsman's previous report of August 2015.

In two instances, item 7 of the Report recorded details of the person who had responsibility for the safekeeping of the things seized but did not specify the Local Area Command location where those things were held.

This issue was raised in writing with the Commissioner of Police, who indicated that action, entailing greater internal scrutiny, would be undertaken in order to reduce the likelihood of such oversights occurring in the future.

A further example of non-compliance which was identified related to the requirement that a report must be made to the eligible issuing officer within 10 days after the execution of the warrant or the expiry of the warrant, whichever occurs first. In relation to the 24 warrants issued to the State Crime Command Gangs Squad, none of the reports were made to the eligible issuing officer within the 10-day statutory requirement. In respect of twenty-three of those warrants, which were executed, the period of non-compliance was 16 days. In respect of one warrant, which was not executed, the period of non-compliance was 14 days. It should be noted that the 24 warrants were all related and concerned a single operation.

This issue only came to light at an inspection that was conducted approximately a week before this report was prepared. In those circumstances it is to be noted that the Commissioner of Police has not yet been provided with the opportunity to respond to the matters highlighted in the preceding paragraph.

2.4 Concluding comments

Inspections showed that, subject to the matters raised above in 2.3, the NSW Police Force complied with Part 5 of the Act in relation to criminal organisation search warrants.