



**Report under Section 242(6) of the
*Law Enforcement (Powers and
Responsibilities) Act 2002* – Criminal
Organisation Search Warrants - for
the period from 7 August 2017 to 6
August 2019**

September 2019

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Chapter 1. Introduction

Amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* (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 sections 66 and 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, pursuant to section 242(6) of the Act, 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 details the results of inspections conducted of agency records between 7 August 2017 and 6 August 2019 together with any other statutory compliance matters of note.

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 May 2018, June 2018, August 2018 and May 2019 and August 2019. 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 125 criminal organisation search warrant files were inspected, identified as being files COSW17/031 to COSW19/023.

2.1 Applications

There were 125 applications for such warrants during the reporting period all of which were issued by an eligible Judge. 18 prospective warrants were not proceeded with.

There were no telephone applications made during the reporting period.

2.2 Warrants

Of the 125 warrants issued:

- 52 related to participate in a criminal group and/or direct activities of a criminal group
- 32 related to proceeds of crime and fraud offences
- 16 related to participate in a criminal group, proceeds of crime and drug offences
- 8 related to drug offences
- 7 related to participate in a criminal group and murder
- 5 related to participate in a criminal group and drug offences
- 4 related to participate in a criminal group and assault occasioning actual bodily harm
- 1 related to participate in a criminal group and accessory after the fact to murder.

The 125 warrants were issued to the following squads within NSW Police Force:

- 62 warrants were issued to the State Crime Command Criminal Groups Squad (Formerly Gangs Squad)
- 19 warrants were issued to the Counter Terrorism and Special Tactics Command
- 15 warrants were issued to the Port Stephens Police District
- 8 warrants were issued to the Organised Crime Squad

- 8 warrants were issued to the Homicide Squad
- 6 warrants were issued to the Central Metropolitan Region Enforcement Squad (Surry Hills)
- 4 warrants were issued to the Drugs and Firearms Squad
- 3 warrants were issued to the Northern Beaches Police Area Command

Of the 125 warrants, 1 was not executed for operational reasons. Items were seized in relation to all but 6 of the remaining 124 warrants.

Items seized included prohibited drugs, mobile phones, knives, firearms, ammunition, handcuffs, prohibited weapons, sim cards, currency, documents, laptops, drug paraphernalia, tobacco, illegal cigarettes, a jet ski, passports, tablet pressing machines, motor vehicles, watches, a safe, currency, gold bullion, storage media and clothing.

2.3 Exceptions or issues identified

Reference was made in the NSW Ombudsman's report of August 2015 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 were still examples of non-compliance with the completion of item 7. This issue was raised with the staff at Covert Applications Unit who are responsible for the oversight of these reports. Those staff indicated that action, in the form of greater internal oversight as well as ongoing training, would be undertaken in order to reduce the likelihood of such oversights occurring in the future.

It is to be noted that this has not been an issue in respect of reports completed since 1 January 2019.

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.