

Office of the Inspector of the Law Enforcement Conduct Commission

Covert Search Warrant Report for the period commencing 29 May 2023 and ending 28 May 2024

Section 242(3) of the *Law Enforcement (Powers and Responsibilities) Act 2002*

June 2024



OFFICIAL

Acknowledgement of Country

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We pay our respects to Elders past, present and emerging and acknowledge the Aboriginal and Torres Strait Islander people.

Covert Search Warrant Report for the period commencing 29 May 2023 and ending 28 May 2024

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Contents

1	Chapter 1 - Introduction	1
1.1	What are the objects of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> ?	1
1.2	What is a search warrant?	1
1.3	What is an occupier's notice?	2
1.4	Different types of search warrants	2
1.5	What is a covert search warrant?	2
1.6	The legislative framework governing covert search warrants	3
1.6.1	Who can apply for a covert search warrant?	3
1.6.2	When can an applicant apply for a covert search warrant?	3
1.6.3	Who can issue a covert search warrant?	4
1.6.4	Applications for covert search warrants	4
1.6.5	What does a covert search warrant look like?	5
1.6.6	Occupier's notice – covert search warrant	5
1.6.7	Notice to Occupier of Adjourning Premises	5
1.6.8	Who can execute a covert search warrant?	5
1.6.9	What powers are provided under a covert search warrant?	6
1.6.10	Seizure of things pursuant to a covert search warrant	6
1.6.11	When do covert search warrants expire?	6
1.6.12	Report to eligible issuing officer on execution of covert search warrant	6
2	The Inspector's functions under the Law Enforcement Conduct Commission Act 2016	8
3	The Inspector's inspection functions and responsibilities under the Law Enforcement (Powers and Responsibilities) Act 2002	9
3.1	Inspection functions	9
3.2	Reporting function	9
3.3	Scope of an Inspection	9
4	Changes to the legislative framework during the reporting period	11
5	Inspections undertaken during the reporting period	12
6	NSW Police Force	13
6.1	Covert Search Warrants Inspected and Issued - Five Year Comparison	13
6.2	Warrants	13
6.3	Section 67 Notice to the Occupier of Premises	13
6.4	Section 74A Report to eligible issuing officer	13
6.5	Exceptions identified at inspections	14
6.6	Concluding comments	15
6.7	Recommendations	15
7	NSW Crime Commission	16

8	Law Enforcement Conduct Commission	17
9	Appendices.....	18
9.1	Appendix A:.....	18
	Section 62 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	18

1 Chapter 1 - Introduction

1.1 What are the objects of the *Law Enforcement (Powers and Responsibilities) Act 2002*?

In New South Wales, the issue of search warrants is authorised and regulated by the *Law Enforcement (Powers and Responsibilities) Act 2002* ("the Act") and the *Law Enforcement (Powers and Responsibilities) Regulation 2005* ("the Regulations").

The Act (or LEPR as it is often referred to) was introduced in response to the Wood Royal Commission into the New South Wales Police Service which recommended that NSW police powers be consolidated to:

- Strike a balance between the need for effective law enforcement and individual rights;
- Assist in ensuring clarity;
- Reduce the possibility of abuse of power through ignorance, and
- Assist in training.

The Act sets out the safeguards applicable in respect of persons being investigated for offences. It includes the powers and responsibilities of NSW police officers and other NSW law enforcement officers, to undertake duties, such as the following:

- Enter premises;
- Require a person's identity to be disclosed;
- Search and seize with or without a warrant or other authorisation;
- Establish crime scenes;
- Arrest individuals;
- Investigate and question;
- Give directions; and
- Use force.

1.2 What is a search warrant?

A standard or **general search warrant** is when an authorised officer such as a Magistrate of a Local Court issues a written order allowing a law enforcement officer to enter the subject premises and to search for things connected with a particular searchable offence¹.

A law enforcement officer executing a search warrant may also search any person found in or on the premises, whom the officer reasonably suspects of having a thing mentioned in the warrant².

Part 5 of the Act regulates the use of search and seizure powers by the issuing of warrants or other authority.

An example of an **authority** would include such circumstances as a police officer legally searching a person, after the person has been arrested and to be held in lawful custody. This type of search is authorised pursuant to sections 27(1)(a) and (b) of the Act and allows the police officer to ascertain,

¹ Section 47A of the Act.

² Section 50 of the Act.

for example, if the person is carrying anything, that would present a danger to themselves or another person, or which they could use to escape lawful custody.

Search warrants may be issued under Pt. 5 of the Act in respect of "searchable offences". These include: an indictable offence, a firearms offence, a narcotics offence, a child abuse material offence, or an offence involving a thing stolen or otherwise unlawfully obtained (s. 46A).

1.3 What is an occupier's notice?

Under a general search warrant, on entry to the premises or as soon as practicable thereafter, the occupier of the premises is provided, by an executing law enforcement officer, with an **occupier's notice**. An occupier's notice includes such details as the following:

- particulars of the warrant, for example, the date the warrant was issued and the date of its expiry;
 - the items being searched for;
 - the basis for the warrant;
 - the rights of the occupier to challenge the issue of the search warrant and/or the conduct of the search; and
 - limitations on the power to search.
-

1.4 Different types of search warrants

In addition to a general search warrant, that may be issued under Part 5 of the Act, there are also other specific warrants which might be issued by an eligible officer at the request of police and other law enforcement officers. These different types of warrants include but are not limited to the following:

- covert search warrants;
 - criminal organisation search warrants;
 - crime scene warrants;
 - warrants relating to domestic violence; and
 - warrants other than Part 5 warrants (such as NSW Crime Commission (NSWCC) search warrants under Division 3 of the *Crime Commission Act 2012*) that may be issued.
-

1.5 What is a covert search warrant?

Section 3 of the Act defines a **covert search warrant** as being "a search warrant issued under Division 2 of Part 5 that may be executed covertly".

They are known as 'covert' search warrants because the occupier of the property does not need to be told about the search until the time specified in the warrant by the issuing Judge. Under the authority of a covert search warrant, police officers and certain members of the staff of the NSWCC and Law Enforcement Conduct Commission (LECC) may enter the subject premises and search without the occupier's knowledge, that is, the search is undertaken in secret with the ability for the occupier to be provided with an occupier's notice sometime later. The notice will usually be provided six months after the search but as indicated below, the time for service of the occupier's notice can be shorter or delayed beyond six months.

Covert search warrants also authorise the executing law enforcement officers to take other steps to ensure the search remains, unknown to the occupier/s for an interval, the details of which are outlined below.

In executing a covert search warrant, police officers and certain members of the staff of the NSWCC and LECC may impersonate another person for the purpose of executing the warrant and may do anything else that is reasonable to conceal anything done in the execution of the warrant from the occupier. They may also gain access to the subject premises by entering adjoining and adjacent premises without the knowledge of the occupier of those premises. In addition to entering a premises covertly, a covert search warrant can authorise the placement of things in substitution for seized things. Furthermore, the Act authorises the return or retrieval of certain things seized or placed under a covert search warrant.

It is not intended that covert search warrants are to be used as a routine investigative tool. Covertly entering and searching premises is a significant departure from standard entry and search powers. The execution of covert search warrants is considerably resource intensive and logistically difficult. However, by conducting a covert search, law enforcement officers can monitor the organisation and development of criminal activity without notifying the targets that they are under surveillance.

1.6 The legislative framework governing covert search warrants

1.6.1 Who can apply for a covert search warrant?

As described in section 46C(1) of the Act, the following persons are authorised to apply for a covert search warrant —

- a police officer authorised to make the application by a police officer holding the rank of Superintendent or above,
- the Chief Commissioner or other Commissioner of the Law Enforcement Conduct Commission or a member of staff of that Commission authorised to make the application by the Chief Commissioner or the Commissioner for Integrity,
- the Commissioner or an Assistant Commissioner for the New South Wales Crime Commission or a member of staff of the New South Wales Crime Commission authorised to make the application by the Commissioner or an Assistant Commissioner.

1.6.2 When can an applicant apply for a covert search warrant?

An 'eligible applicant' may apply to an 'eligible issuing officer' for a covert search warrant if, as required by section 47(3) of the Act, the applicant:

- suspects on reasonable grounds that there is, or within 10 days will be, in or on the premises a thing of a kind connected with a searchable offence in relation to the warrant, and
- considers that it is necessary for the entry and search of those premises to be conducted without the knowledge of any occupier of the premises.

A '**searchable offence**' in relation to a covert search warrant is defined in section 46A(1)(b) of the Act as being a 'serious offence'.

Section 46A(2) of the Act defines a '**serious offence**' as:

- a. any indictable offence punishable by imprisonment for a period of 7 or more years and that involves the following —
 - i. the supply, manufacture or cultivation of drugs or prohibited plants,
 - ii. the possession, manufacture or sale of firearms within the meaning of the Firearms Act 1996,
 - iii. money laundering,

Note –

For example, section 193B of the *Crimes Act 1900*.

- iv. car and boat rebirthing activities,

Note –

For example, section 154G of the *Crimes Act 1900*.

- v. the unauthorised access to, or modification or impairment of, computer data or electronic communications,
- vi. an activity involving theft carried out on an organised basis,
- vii. violence causing grievous bodily harm or wounding,
- viii. the possession, manufacture or supply of false instruments,
- ix. corruption,
- x. destruction of property,
- xi. homicide,
- xii. kidnapping,
- b. any offence under Division 10 (Sexual offences against adults and children) of Part 3 of the *Crimes Act 1900* punishable by imprisonment for a period of 7 or more years,
- c. an offence under section 80D (Causing sexual servitude) or 80E (Conduct of business involving sexual servitude) of the *Crimes Act 1900*,
- d. an offence under section 93FA (Possession, supply or making of explosives) of the *Crimes Act 1900*,
- e. an offence under Division 15 (Child prostitution) or 15A (Child pornography) of Part 3 of the *Crimes Act 1900*,
- f. an offence under section 308F (Possession of data with intent to commit serious computer offence) or 308G (Producing, supplying or obtaining data with intent to commit serious computer offence) of the *Crimes Act 1900*,
- g. an offence of attempting to commit, or of conspiracy or incitement to commit, or of aiding or abetting, an offence referred to in paragraphs (a)–(f).

1.6.3 Who can issue a covert search warrant?

Covert search warrants can only be issued by an eligible issuing officer, namely a Judge of the New South Wales Supreme Court who has been declared to be eligible by the New South Wales Attorney General.

1.6.4 Applications for covert search warrants

An application for a covert search warrant must in the form prescribed by the Regulations. Form 2 in Schedule 1 of the Regulations is the current form prescribed for applications for covert search warrants.

An application for a covert search warrant must contain the information specified in sections 62(1) and 62(2) of the Act. Form 2, once completed, will contain all the relevant information which is required by section 62 of the Act. For ease of reference, a copy of section 62 of the Act is provided in **Appendix A** at the end of this report.

When determining an application for a covert search warrant, the eligible Judge must consider the matters specified in sections 62(3) and 62(4) of the Act. For example, one matter for consideration is the extent to which it is necessary for the entry and search of those premises to be conducted without the knowledge of the occupier/s of the premises.

1.6.5 What does a covert search warrant look like?

The written form of a covert search warrant is prescribed in the Regulations, see Form 12 in Schedule 1 of the Regulations.

1.6.6 Occupier's notice – covert search warrant

Section 67(8) of the Act provides that a person executing a covert search warrant must serve the **occupier's notice** as soon as practicable after the warrant is executed unless the service of the notice is postponed under section 67A. A law enforcement officer seeking to delay service of the occupier's notice must include grounds for seeking to delay service in their Form 2 application. Any postponement to service is determined by the eligible Judge who issued the warrant.

Pursuant to s. 67A of the Act, service of the occupier's notice for covert search warrants may be delayed for up to 6 months at a time. In exceptional circumstances the service of the notice may be delayed beyond 18 months, but it must not be delayed beyond 3 years in any circumstances.

The form of a covert search warrant occupier's notice is Form 22 in Schedule 1 of the Regulations.

1.6.7 Notice to Occupier of Adjourning Premises

While executing a covert search warrant, police, and other law enforcement officers, may need to enter premises adjoining, or providing access, to the premises, the subject of the warrant.

Section 67B of the Act, sets out the requirements of an **adjourning occupier's notice**.

In relation to the timing of the service of the Notice to Occupier of Adjourning Premises, section 67B(4) of the Act provides that:

“The adjoining occupier's notice must be served on the person who was the occupier of the adjoining premises at the time the covert search warrant was executed, on (or as soon as practicable after) service of the occupier's notice on the occupier of the subject premises under section 67 unless the eligible issuing officer directs that service of the notice may be dispensed with.”

The current form of a notice to an occupier of an adjoining premises with respect to a covert search warrant is Form 23 in Schedule 1 of the Regulations.

1.6.8 Who can execute a covert search warrant?

An 'executing officer' in relation to a covert search warrant is defined in s. 46 of the Act as being:

- any police officer, or
- any member of staff of the Law Enforcement Conduct Commission if the applicant for the warrant was authorised to make the application under section 46C(1)(b), or
- any member of staff of the New South Wales Crime Commission if the applicant for the warrant was authorised to make the application under section 46C(1)(c).

1.6.9 What powers are provided under a covert search warrant?

Any **search warrant** authorises any executing officer for the warrant –

- to enter the subject premises, and
- to search the premises for things connected with a particular searchable offence in relation to the warrant.

Note – Other sections of the Act authorise other things to be done under search warrants.

If the search warrant is a **covert search warrant**, the executing officer is also authorised as follows:

- to conduct the entry and search of the subject premises without the knowledge of any occupier of the subject premises, and
- if necessary to do so to enter and search the subject premises – to enter premises adjoining or providing access to the subject premises (adjacent premises) without the knowledge of the occupier of the adjacent premises, and
- to impersonate another person for the purposes of executing the warrant, and
- to do anything else that is reasonable for the purpose of concealing anything done in the execution of the warrant from the occupier of the premises³.

1.6.10 Seizure of things pursuant to a covert search warrant

Section 49 of the Act authorises the seizure of things pursuant to a search warrant, and in the case of a covert search warrant, the Act provides the power to place a thing of that kind on the subject premises, in substitution for a thing seized.

Section 49A of the Act provides that a ‘covert search warrant may authorise the return of a thing seized under section 49(1)(a), or the retrieval of a thing placed under section 49(2)(c), if the warrant expressly authorises such a return or retrieval’. However, that section imposes time limits for the return or retrieval of things seized. Any re-entry to return or retrieve a thing must occur within 7 days of the first entry under the covert search warrant (or such longer period as is allowed, prior to the expiration of the 7-day period, by an eligible issuing officer).

1.6.11 When do covert search warrants expire?

Covert search warrants expire 10 days after the date on which they are issued unless the warrant specifies an earlier expiry date⁴.

There is no provision in the Act for the extension of a covert search warrant, only for the postponement of service of the Occupier’s notice and any relevant notice to an Adjourning Occupier.

1.6.12 Report to eligible issuing officer on execution of covert search warrant

Section 74A of the Act provides that within 10 days of executing a covert search warrant, or of the warrant expiry date if the warrant is not executed, the executing officer is required to provide a

³ Section 47A of the Act.

⁴ Section 73 of the Act.

report in writing to the eligible Judge who issued the warrant. The report about the execution of the covert search warrant must be in, or to the effect of, Form 28 in Schedule 1 of the Regulations and must contain the particulars required to complete that Form⁵.

Section 74A provides that, if premises are entered for the purposes of returning or retrieving a thing, then a second report is to be provided in writing to the Judge within 10 days after the entry to the premises for the purpose of retrieving or returning the thing. This report must be in or to the effect of Form 29 in Schedule 1 of the Regulations and must contain the particulars required to complete that Form⁶.

Aside from providing a copy of the report/s to the Judge who issued the warrant, the Act requires that copies of these reports must also be given to the Attorney General⁷.

If an executing officer for a covert search warrant has died or is absent the report/s may be provided by another person from the law enforcement authority in which the executing officer was or is employed who is authorised to make an application for a covert search warrant⁸.

⁵ Clause 12(1) of the Regulations.

⁶ Clause 12(2) of the Regulations.

⁷ Section 74A(5) of the Act. Whilst the Act is silent as to the number of days by which the report must be given to the Attorney General, most law enforcement agencies interpret the Act to require that the report to be provided within 10 days.

⁸ Section 74(7) of the Act.

2 The Inspector's functions under the Law Enforcement Conduct Commission Act 2016

Section 122(1) of the *Law Enforcement Conduct Commission Act 2016* (LECC Act) provides that the Inspector of the Law Enforcement Conduct Commission ("the Inspector") has the functions conferred or imposed on the Inspector by or under this or any other Act.

Note—

Functions conferred on the Inspector under other Acts include the functions of an inspecting officer under the following:

- *Telecommunications (Interception and Access) (New South Wales) Act 1987*;
- *Surveillance Devices Act 2007*; and
- *Law Enforcement (Controlled Operations) Act 1997*.

3 The Inspector's inspection functions and responsibilities under the Law Enforcement (Powers and Responsibilities) Act 2002

3.1 Inspection functions

Section 242(1) of the Act requires the Inspector to inspect the records of agencies authorised to apply for covert search warrants to ascertain their compliance with Part 5 of the Act (in so far as it relates to covert search warrants).

The Inspector must inspect the records of the NSW Police Force, the New South Wales Crime Commission, and the Law Enforcement Conduct Commission, every 12 months. Practically, the Inspector asks his delegated officers, the compliance officers of the Secure Monitoring Unit (SMU), to undertake the inspections required.

To facilitate that function, section 242(2) of the Act provides that 'the Inspector may require the Commissioner of Police, the Commissioner for the New South Wales Crime Commission and the Chief Commissioner of the Law Enforcement Conduct Commission to provide access to the relevant records.'

3.2 Reporting function

The Inspector must, as soon as practicable after 28 May of each subsequent year, prepare a report of the Inspector's work and activities under subsection (1) and furnish a copy of the report to the Attorney General and the Minister for Police⁹.

The Attorney General is to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after the Attorney General receives the report¹⁰.

This report, that you are reading, is the report prepared by the Inspector detailing the results of inspections conducted by the Inspector and/or his compliance officers during the period commencing 29 May 2023 and ending on 28 May 2024.

3.3 Scope of an Inspection

Inspecting officers aim to inspect every covert search warrant file at each agency that applied for such warrants. The inspections included an examination of the application, warrant, occupier's notice, adjourning occupier's notice (if there is one), any reports to the issuing Judge together with any other information contained on the file.

Each inspection involves checking the following details recorded on those files (with reference to the relevant section of the Act and/or the form prescribed in the Regulations) to ensure that:

- the applicant is authorised to apply for the covert search warrant (section 46C)

⁹ Section 242(3) of the Act.

¹⁰ Section 242(7) of the Act.

- the application is in the form prescribed by the Regulations (Form 2) and is made in person by the applicant (section 60), or in the case of an application made by email the application is made in accordance with section 60A, or in the case of an application for a telephone warrant is made in accordance with section 61
- the application contains the information required by section 62
- the warrant is in the form prescribed by the Regulations (Form 12)
- the warrant meets the requirements of section 66, which includes detailed information about the premises, the occupant and their likely involvement or not in the searchable offence
- the occupier's notice is in the form prescribed by the Regulations (Form 22)
- the occupier's notice contains the particulars specified in section 67(2) in order to provide the occupier with sufficient information about the warrant
- any occasion of the postponement of service of the occupier's notice does not exceed 6 months, and that postponement is not delayed for more than 3 years in total (sections 67A(1) and (2))
- if an occupier's notice is postponed for more than 18 months that there are exceptional circumstances provided to the eligible Judge who issued the warrant (section 67A(3))
- if adjoining premises are entered in execution of the covert search warrant, that the adjoining occupier's notice is in the form prescribed by the Regulations (Form 23) and it contains the information specified, and that it was served on the adjoining occupier at the time the covert search warrant was executed, unless the eligible Judge who issued the warrant directed that service of the adjoining occupier's notice may be dispensed with (section 67B)
- the report about the execution of the covert search warrant is in the form prescribed by the Regulations (Form 28) and contains the particulars specified in section 74A
- the report about the execution of the covert search warrant to the eligible Judge who issued the warrant is provided within 10 days after the execution of the warrant or its expiry, whichever occurred first (section 74A(2))
- if a digital evidence access order was issued in connection with the warrant – the report sets out a brief description of the use of the order (section 74A(c1))
- if a covert search warrant authorises the return or retrieval of a thing seized or placed, the report is in the form prescribed by the Regulations (Form 29) and contains the particulars specified in section 74A
- the report about the return or retrieval of a thing seized or placed is provided within 10 days after the entry to the premises for the purpose of retrieving or returning the thing under section 49A (section 74A(4))
- copies of any reports provided to the issuing Judge under section 74A are given to the Attorney General (section 74A(5)).

Records about the execution of covert search warrants and those relating to entry and seizures are also examined to ascertain the accuracy of the reports to the eligible Judge who issued the warrant. This involves follow up during later inspections to confirm that occupier's notices have been served as soon as any period of postponement has expired.

After conducting inspections, the Inspector's delegated compliance officers hold an exit interview with, or send an email to, the manager or compliance officer responsible for warrant administration at the relevant agency as to the compliance issues identified. Subsequently, these officers correspond with the manager/officer to address and resolve any issues discovered during the inspection. Following this, the Inspector sends a formal post-inspection feedback letter to the relevant chief officer of the agency, reporting on the inspection's outcomes and highlighting any matters of concern that may have arisen during the process.

4 Changes to the legislative framework during the reporting period

Whilst there have been legislative changes made to the Act (LEPRA) during the reporting period, none of the changes made, directly affect the provisions as to covert search warrants referred to in this report nor did they change the functions of the Inspector under the Act.

5 Inspections undertaken during the reporting period

During the reporting period, the New South Wales Police Force (NSWPF) applied for covert search warrants and as such its records were inspected by compliance officers at OILECC. Inspections took place at the Covert Applications Unit (CAU) in September 2023 and May 2024.

Over the last 12 months, the compliance officers at OILECC have continued to maintain a good working relationship with the members of the CAU. The CAU is responsible for assisting with, and monitoring, applications for covert search warrants and subsequent reporting requirements. The current cooperative working arrangements have greatly assisted in facilitating the development of best practice models and have also contributed to aiming for a high level of compliance with the legislative requirements.

Inspections at the NSWCC and LECC were not conducted as no applications for a covert search warrant were made by those law enforcement agencies, consequently, there were no records to inspect.

6 NSW Police Force

During the reporting period, the covert search warrant files inspected, at the CAU, contained records relating to 24 proposed, overt search warrant applications. Of the proposed applications, 21 proceeded and warrants were issued in relation to each of them.

The CAU centrally manages all covert search warrant applications, supporting the NSWPF to operate in compliance with the requirements of the Act.

6.1 Covert Search Warrants Inspected and Issued - Five Year Comparison

Table 1

2020	2021	2022	2023	2024
37	36	33	20	21

6.2 Warrants

The types of offences investigated in relation to the warrants granted were murder, fraud offences, drug offences, firearms offences, dealing with the proceeds of crime (in conjunction with drug offences) and car rebirthing offences.

6.3 Section 67 Notice to the Occupier of Premises

It is typical for the NSWPF to seek that the service of occupier's notices be postponed for 6 months. Of the 21 warrants issued and inspected, 20 had the service of the occupier's notice postponed, for initially, 6 months. Service of the occupier's notice for the other warrant inspected was postponed for 4 months.

Information relevant to each warrant is held at the CAU but the responsibility for the service of the occupier's notice lies with the officer responsible for executing each warrant. These officers may be located anywhere across the state. The CAU has developed a register which assists with the preparation of its annual report on the results of these warrants. This register now specifies the time for the service of the occupier's notice and the date on which the notice was served. This register also assists the CAU to monitor the service of the occupier's notice at locations around the state.

An examination of the register revealed that those occupier's notices that were served during the reporting period were served within the required timeframe.

6.4 Section 74A Report to eligible issuing officer

During this year, of the 21 warrants inspected that were granted to the NSW Police Force, 17 were executed and 4 were not executed.

One s.74A report was potentially served on the issuing judge, 169 days after the due date. Further details as to this report are outlined in the exceptions section below.

6.5 Exceptions identified at inspections

The following exceptions were identified during the reporting period:

- 1. In September 2023, an OILECC compliance officer could not locate a record of a section 74A report being sent to the issuing Judge or the Attorney General.**
 - The CAU warrant file included a report dated 24 March 2023 provided by the Officer in Charge.
 - However, there was no record, held by CAU, of this report being uploaded to the secure Dekko platform for the issuing judge and the Attorney General's delegate.
 - The report was due to be provided by 9 April 2023.
 - Due to the absence of a contemporaneous record of the report being sent in late March 2023, the report was sent to the issuing Judge and Attorney General on 25 September 2023.
 - During the May 2024 inspection, OILECC officers observed that screenshots of Dekko uploads are now saved contemporaneously in all CSW warrant files.
- 2. The NSWPF self-declared an error where the wrong name of the occupier was included on a record of postponement of service of the occupier's notice.**
 - An amended version of the record of postponement was sent to the issuing judge for correction.
- 3. An OILECC compliance officer found an application for a covert search warrant incorrectly stating that no previous covert search warrants had been issued to the same address.**
 - The officer had inspected a previous covert search warrant issued to the same address.
 - Consequently, the application was re-submitted by the CAU to the issuing judge, including a reference to the prior search warrant.
 - The CAU has implemented measures to prevent similar errors in the future.
- 4. One occupier's notice had the wrong date for when the warrant expired.**
 - As the service of the occupier's notice had been postponed, the date was corrected on the notice prior to service.

Whilst not a specific exception to the legislation or an administrative error, the OILECC compliance officers observed that applicants for covert search warrants did not seem to be turning their minds to whether they needed to seek authorisation for the empowerment of officers from the LECC and the NSWCC to be involved in the execution of these warrants. It seemed standard for covert search warrants to be sought seeking authorisation for the involvement of officers from all three law enforcement agencies, yet it appeared rare for LECC and NSWCC officers to be involved in the execution of these warrants,

During the reporting period, the Inspector informed the Commissioner of Police that NSWPF officers should have regard to whether NSWPF officers only are to be involved in the execution of these warrants, if so, then reference to the other law enforcement agencies should be deleted from the draft Form 12 warrant. The CAU has informed the OILECC that consideration as to the latter will be raised in future procedures prepared as to these warrants.

6.6 Concluding comments

The NSWPF were mostly compliant with Part 5 of the Act in so far as it related to covert search warrants.

6.7 Recommendations

No recommendations are made.

7 NSW Crime Commission

The NSW Crime Commission did not apply for any covert search warrants during the period covered by this report.

8 Law Enforcement Conduct Commission

The Law Enforcement Conduct Commission did not apply for any covert search warrants during the period covered by this report.

9 Appendices

9.1 Appendix A:

Section 62 of the *Law Enforcement (Powers and Responsibilities) Act 2002*

1. An eligible issuing officer must not issue a warrant unless the application for the warrant includes the following information--
 - a. the name of the applicant and details of the authority of the applicant to make the application for the warrant,
 - b. particulars of the grounds on which the application is based, including (without limitation) the nature of the searchable offence or other offence involved,
 - c. the address or other description of the subject premises,
 - d. if the warrant is required to search for a particular thing--a full description of that thing and, if known, its location,
 - e. if the warrant is required to search for a kind of thing--a description of the kind of thing,
 - f. if a previous application for the same warrant was refused--details of the refusal and any additional information required by section 64,
 - g. any other information required by the regulations.
2. In addition, an eligible issuing officer must not issue a covert search warrant unless the application for the warrant includes the following information--
 - a. the name of the following persons--
 - i. the occupier (if known) of the subject premises,
 - ii. any person believed to have committed, or to be intending to commit, the searchable offence in respect of which the application is made,
 - b. whether the occupier is believed to be knowingly concerned with the commission of that searchable offence,
 - c. if it is proposed that premises adjoining or providing access to the subject premises be entered for the purposes of entering the subject premises--the address or other description of the premises that adjoin or provide such access and particulars of the grounds on which entry to those premises is required,
 - d. any powers proposed to be exercised on entry to the subject premises that are sought to be authorised by the warrant under section 47A(2)(d),
 - e. details of any covert search warrant that has previously been issued in respect of the subject premises.
- (2A) In addition, an eligible issuing officer must not issue a criminal organisation search warrant unless the application for the warrant includes the following information--
 - a. the name of the following persons--
 - i. the occupier (if known) of those premises,

- ii. any person believed to have committed, or to be intending to commit, the searchable offence in respect of which the application is made,
 - b. whether the occupier is believed to be knowingly concerned with the commission of the searchable offence.
3. An eligible issuing officer, when determining whether there are reasonable grounds to issue a warrant, is to consider (but is not limited to considering) the following matters--
 - a. the reliability of the information on which the application is based, including the nature of the source of the information,
 - b. if the warrant is required to search for a thing in relation to an alleged offence--whether there is sufficient connection between the thing sought and the offence.
4. In addition, an eligible issuing officer, when determining whether there are reasonable grounds to issue a covert search warrant, is to consider the following matters--
 - a. the extent to which it is necessary for the entry and search of those premises to be conducted without the knowledge of any occupier of the premises,
 - b. the nature and gravity of the searchable offence in respect of which the application is made,
 - c. the extent to which the privacy of a person who is not believed to be knowingly concerned in the commission of the searchable offence is likely to be affected if the warrant is issued,
 - d. whether any conditions should be imposed by the eligible issuing officer in relation to the execution of the warrant,
 - e. if it is proposed that premises adjoining or providing access to the subject premises be entered for the purposes of entering the subject premises--
 - i. whether this is reasonably necessary in order to enable access to the subject premises, or
 - ii. whether this is reasonably necessary in order to avoid compromising the investigation of the searchable offence or other offence.
5. The applicant must provide (either orally or in writing) such further information as the eligible issuing officer requires concerning the grounds on which the warrant is being sought.
6. Nothing in this section requires an applicant for a warrant to disclose the identity of a person from whom information was obtained if the applicant is satisfied that to do so might jeopardise the safety of any person.

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