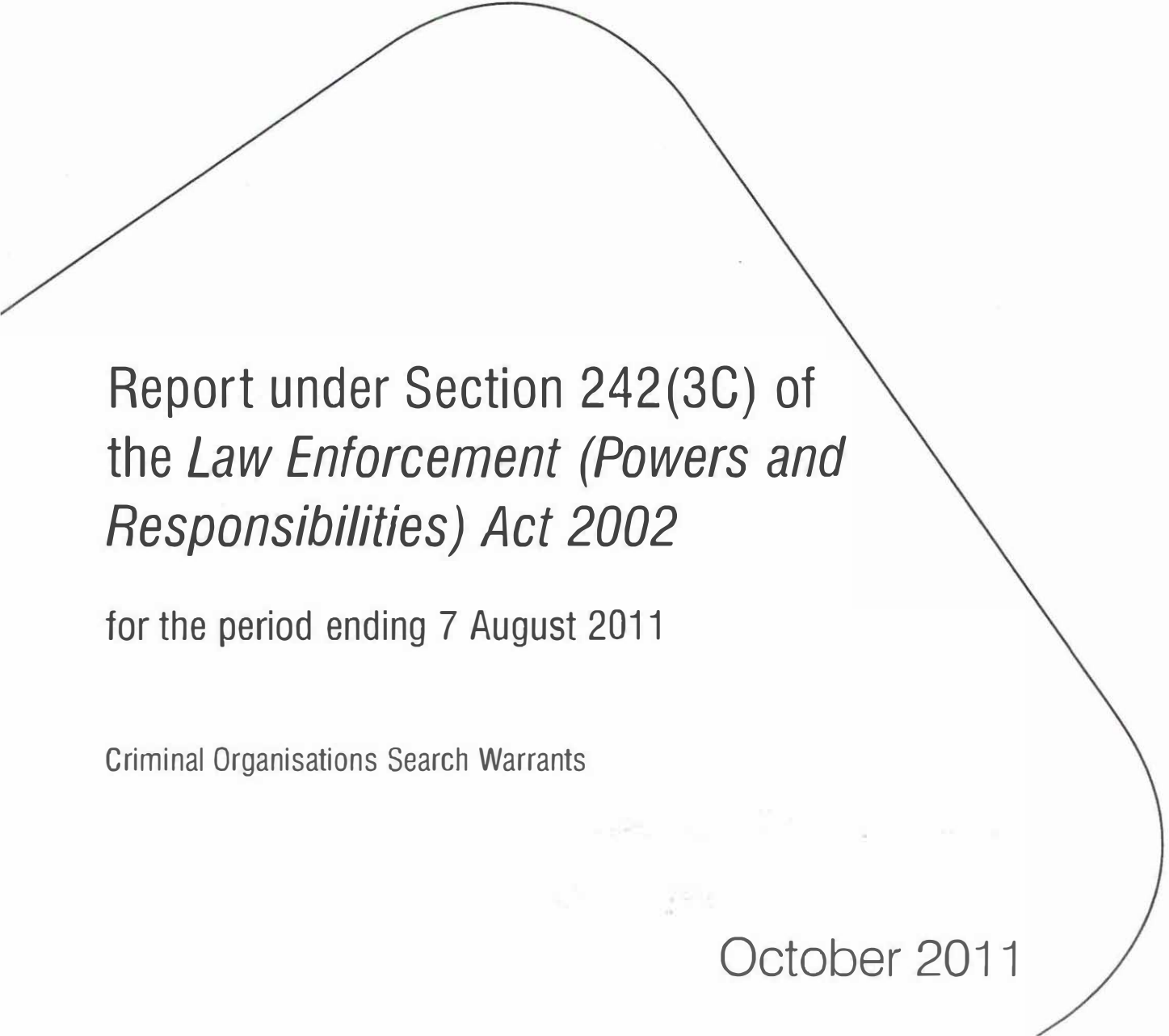


NSW Ombudsman

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

Criminal Organisations Search Warrants
for the period ending 7 August 2011

October 2011



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Responsibilities) Act 2002*

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Our logo has two visual graphic elements; the 'blurry square' and the 'magnifying glass' which represents our objectives. As we look at the facts with a magnifying glass, the blurry square becomes sharply defined, and a new colour of clarity is created.

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ISBN 978-1-921884-36-8

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October 2011



NSW Ombudsman

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The Honourable Michael Gallacher MLC
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Dear Attorney and Minister

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

The Law Enforcement (Powers and Responsibilities) Act 2002 requires the Ombudsman to inspect the records of the NSW Police Force in relation to their use of criminal organisation search warrants to determine whether or not the requirements of the Act are being complied with.

The Act also requires me to report to you as soon as practicable after each two years following the commencement of the provisions.

I am pleased to present you with the first report under section 242(3C) of the Law Enforcement (Powers and Responsibilities) Act 2002 which covers our inspection of records relating to criminal organisation search warrants for the 2 years up to 7 August 2011.

Pursuant to section 242(4) of the Act, the Attorney General is required to lay the report (or cause it to be laid) before both Houses of Parliament as soon as practicable following its receipt.

Once tabled it is my intention to publish the report on the Ombudsman's website www.ombo.nsw.gov.au.

I would therefore appreciate your earliest advice as to the tabling of the report.

Yours sincerely

Bruce Barbour
Ombudsman

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Introduction

In August 2009 certain amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) (the Act) came into force; the amendments included matters relating to some search powers.

Specifically, 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.

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, 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.

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.

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

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 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 prescribe 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.

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 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.

Role of the Ombudsman

To provide external oversight of the use of these powers, the NSW Ombudsman is required to inspect the records of law enforcement agencies 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. It has been the practice of the Ombudsman to carry out these inspections in conjunction with those inspections of covert search warrants which take place at least every 12 months.

Section 242(3A) of the Act commenced on 7 August 2009. 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 2009 until 7 August 2011; it is the Ombudsman's first report on this inspection function.

Scope of an Inspection

The Ombudsman inspects each individual criminal organisation search warrant file at NSW Police 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 (s46D)
- the application is in the form prescribed by the regulations and is made in person by the applicant (s60)
- the application contains the information required by s62 and in particular s62 (2A)
- the warrant is in the form prescribed by the regulation [Form 9B]
- the warrant fulfils the requirements of s66, 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 s67(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 20B] and contains the particulars specified in s74
- 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.

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 May 2010, April 2011 and August 2011.

Inspection results

During the reporting period 25 criminal organisation search warrant files were inspected, CSW10/001 to CSW11/006.

Applications

There were 25 criminal organisation search warrant applications made during the reporting period. All were granted and warrants issued. There were no telephone applications made.

Warrants

In relation to the 25 warrants granted, 19 warrants specifically targeted organised crime offences and in all cases these were offences related to the manufacture and supply of commercial quantity of prohibited drugs and the remaining five warrants targeted organised crime offences and serious violence offences which related to prohibited drug offences, money laundering, armed robbery, demand property with intent to steal, steal motor vehicle, fire firearm at dwelling and shoot with intent to murder.

Four of the warrants authorised the warrant to be served by night if required. The warrants were issued to the following squads within NSWPF State Crime Command:

- 14 warrants were issued to the Firearms and Organised Crime Squad

- 5 warrants were issued to the Gangs Squad

- 6 warrants were issued to the Middle Eastern Organised crime Squad.

All 25 warrants were executed and items were seized, with the exception of two warrants where the warrants were executed but no items were seized.

In relation to 18 of the warrant executions, items seized included suspected prohibited drugs and in relation to the execution of 5 warrants the items seized included firearms and/or ammunition. Other items seized included, mobile phones and sim cards, Australian currency, documents, knives, drug paraphernalia, chemical equipment and clothing.

Exceptions or issues identified

The first 14 warrants issued under these provisions were issued to the Firearms and Organised Crime Squad in relation to Strike Force "Baranbali". In relation to the reports required by section 74 of the Act the reports on the execution of these warrants did not adequately address point 7 of Form 20 relating to the serving of the occupiers notice. With the exception of warrant 10/005, it was not clear whether the occupiers notice was served.

The form states:

**7 The occupier's notice was not served/served on* [Specify manner of service and on whom notice was served.]*
[Delete if inapplicable.]*

The relevant option was not deleted and the name of the person served was not stated.

The reports to the eligible issuing officer in relation to warrants 10/001 to 10/014 inclusive were not provided within the 10 day time frame required by the legislation. All reports took 15 days to be provided to the eligible issuing officer.

Warrants 10/015 to 10/018 were issued to members of the Gangs Squad, the reports on these warrants suffered from the same inadequacy in relation to point 7 of Form 20 in that it was not clear whether the occupiers notice was served and on whom the notice was served.

These reports were signed by the eligible issuing officer on receipt of the report, but there was no date to indicate when the report was received. As a result it was unable to be determined whether the report was provided to the eligible issuing officer within the 10 day time frame.

in relation to warrants 10/019 issued to the Gangs Squad, and warrants 11/001 to 11/006 issued to the Middle Eastern Organised Crime Squad these applications, warrants and reports were compliant.

Concluding comments

For the reporting period the NSW Police Force was substantially compliant with Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* in so far as it related to criminal organisation search warrants.

It appears that the problems indicated above in relation to the early warrants issued under this legislation have now been addressed.

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