

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

Part 5 of the Law Enforcement (Powers and Responsibilities) Act 2002 (the principal Act) sets out powers of police and other persons to enter and search premises under the authority of a search warrant (in this explanatory note described as a standard search warrant). Part 5 requires an occupier's notice to be served on entry to the premises concerned or as soon as practicable after, unless service is postponed by the authorised officer who issued the warrant.

The object of this Bill is to amend the principal Act to enable Supreme Court judges to issue search warrants (called covert search warrants) that, in addition to authorising the exercise of powers currently able to be exercised under standard search warrants, also enable specially authorised police officers and staff of the New South Wales Crime Commission and the Police Integrity Commission to enter and search premises covertly for the purposes of investigating serious criminal offences. Service of occupier's notices in relation to covert search warrants may be deferred for up to 6 months (with possible extensions up to 3 years) after entry to the premises. This Bill also amends the principal Act to create new powers to remove computers and similar devices from premises the subject of any search warrant for up to 7 working days (or longer on application) for examination and to search computers that

Explanatory note page 2

Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009

Explanatory note

are "networked" to a computer at the premises. The Bill amends the Terrorism (Police Powers) Act 2002 to enable eligible persons executing covert search warrants under that Act to exercise similar powers under that Act.

This Bill also makes consequential amendments to other Acts and the Law Enforcement (Powers and Responsibilities) Regulation 2005.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002

No 103

Schedule 1 [1] and [3] amend sections 3 and 46, respectively, of the principal Act to insert definitions into the Act for the purposes of the new provisions relating to covert search warrants.

Schedule 1 [4] amends section 46 to make it clear that Part 5 of the principal Act (as amended) does not apply to or affect covert search warrants issued under the Terrorism (Police Powers) Act 2002.

Schedule 1 [5] inserts new sections 46A–46C into the principal Act.

New section 46A defines searchable offence in relation to search warrants. A standard search warrant may be obtained in relation to the same offences as is currently the case under Part 5 of the principal Act. Covert search warrants will only be able to be obtained in relation to specified serious offences. These are generally indictable offences punishable by imprisonment for a period of 7 years or more that involve various drug, sexual and other serious offences.

New section 46B defines eligible Judge. A covert search warrant will only be able to be issued by an eligible Judge.

New section 46C specifies the persons (called eligible applicants) who are authorised to apply for a covert search warrant. They are police officers authorised to make applications by a police officer holding the rank of Superintendent or above, Commissioners or Assistant Commissioners for the New South Wales Crime

Commission and the Police Integrity Commission and members of staff of the New South Wales Crime Commission and Police Integrity Commission authorised by the Commissioner for the New South Wales Crime Commission or the Commissioner for the Police Integrity Commission, respectively. An authorisation may only be given if the person giving it considers that it is necessary for the entry and search of the premises to be conducted without the knowledge of any occupier of the premises.

Explanatory note page 3

Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009

Explanatory note

Schedule 1 [7] omits sections 47–50 and inserts new sections 47, 47A, 48, 49, 49A and 50 into the principal Act.

New section 47 sets out the grounds on which an application for a standard search warrant or covert search warrant may be made. It restates (without changing the substance) the grounds on which a standard search warrant may currently be issued. An eligible applicant who proposes to enter and search premises covertly may apply for a covert search warrant if 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 and considers that it is necessary for the entry and search to be conducted without the knowledge of the occupier of the premises.

New section 47A describes the features of, and difference in the authority conferred by, standard search warrants and covert search warrants. A standard search warrant authorises an executing officer to enter the subject premises and to search for things connected with a particular searchable offence. Under the authority of a covert search warrant, police officers and certain members of the staff of the New South Wales Crime Commission and Police Integrity Commission may enter the subject premises without the occupier's knowledge, 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. Provision is made elsewhere in this Bill for the occupier of the subject and adjoining premises to subsequently be notified of the entry (see Schedule 1 [23] and [24]).

New section 48 sets out the grounds on which the two kinds of search warrants may be issued and enables a standard search warrant to be issued instead of a covert search warrant in specified circumstances.

New section 49 specifies that things may be seized and detained in the execution of a search warrant. It also enables a covert search warrant to authorise placement of things in substitution for seized things.

New section 49A authorises the return or retrieval of certain things seized or placed under a covert search warrant.

New section 50 empowers a person executing a search warrant to search a person found in or on premises entered under a search warrant if the person executing the warrant reasonably suspects the person of having any thing mentioned in the warrant.

Schedule 1 [14] replaces section 62 of the principal Act with new section 62, which sets out the information to be contained in an application for a search warrant.

Schedule 1 [16] amends section 63 of the principal Act to make it an offence to give false or misleading information in a report or occupier's notice in relation to a search warrant, knowing it to be false or misleading.

Explanatory note page 4

Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009

Explanatory note

Schedule 1 [20] amends section 65 of the principal Act to require an eligible issuing officer who refuses to issue a warrant to record the grounds relied on by the officer to justify the refusal.

Schedule 1 [21] amends section 66 of the principal Act to require a covert search warrant to specify certain matters.

Schedule 1 [23] amends section 67 of the principal Act so as to alter the current requirements for service of occupier's notices in relation to the execution of standard search warrants and provide for service of occupier's notices in relation to the execution of covert search warrants. At present an occupier's notice is required to be personally served on an occupier on entry to premises or as soon as practicable after, unless service is postponed. Service may be postponed on more than one occasion (for up to 6 months at a time). New section 67 (4)–(7) instead require personal service on entry or within 48 hours after entry. If this proves impossible, an eligible issuing officer may make orders to bring the entry to the notice of the occupier otherwise than by personal service. New section 67 (8) requires service of an occupier's notice in relation to a covert search warrant as soon as practicable after the warrant is executed unless it is postponed under new section 67A (Schedule 1 [24]).

Schedule 1 [24] inserts new sections 67A and 67B into the principal Act.

New section 67A enables an eligible issuing officer to postpone service of an occupier's notice in relation to a covert search warrant for an initial period of up to 6 months and on further occasions for up to 3 years in total. An eligible issuing officer may not postpone service for periods exceeding 18 months in total unless satisfied that there are exceptional grounds to justify the postponement.

New section 67B requires an adjoining occupier's notice to be served on an adjoining occupier whose property is entered under a covert search warrant within specified periods, unless service is postponed or dispensed with by the eligible issuing officer.

Schedule 1 [28] amends section 70 of the principal Act to specifically authorise a person executing a search warrant to do anything reasonably necessary to render safe any dangerous article found in or on the premises.

Schedule 1 [29] amends section 72 of the principal Act to authorise the execution of a covert search warrant by day or by night.

Schedule 1 [33] amends section 73 of the principal Act to provide for the expiry of a covert search warrant 10 days after the date on which it is issued.

Schedule 1 [40] inserts new section 74A into the principal Act.

New section 74A requires a person executing a covert search warrant to report certain matters to the eligible issuing officer who issued the warrant within 10 days after the execution of the warrant or, if the warrant was not executed, within 10 days after the expiry of the warrant. A report is also to be provided if premises are entered

Explanatory note page 5

Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009
Explanatory note

for the purposes of returning or retrieving a thing under new section 49A. Copies of reports provided under the new section are to be given to the Attorney General.

Schedule 1 [42] inserts new sections 75A and 75B into the principal Act.

New section 75A authorises a person executing or assisting in the execution of a warrant to bring to and operate electronic and other equipment at the premises for the purpose of examining things at the premises to determine whether they may be seized and to remove things from the premises for examination in specified circumstances.

New section 75B authorises a person executing or assisting in the execution of a warrant to operate computers and other equipment at the premises the subject of the warrant to access data that the person believes on reasonable grounds may be seized under the warrant and, in certain circumstances, to copy that data or take the data storage device from the premises.

Schedule 1 [43] inserts new sections 76A and 76B into the principal Act.

New section 76A provides for applications under Part 5 in respect of covert search warrants to be dealt with in the absence of the public.

New section 76B makes it an offence to publish certain applications, reports and notices concerning search warrants.

Schedule 1 [45] amends section 201 of the principal Act so that it will not require warnings to be given or evidence to be given of the identity of a police officer in exercising powers under a covert search warrant.

Schedule 1 [46] and [47] amend section 242 of the principal Act to provide for the Ombudsman to monitor the operation of provisions of the Act relating to covert search warrants and to make a yearly report to the Attorney General and the Minister for Police.

Schedule 1 [48] inserts new section 242A into the principal Act to require the Commissioner of Police, the Commissioner for the New South Wales Crime Commission and the Commissioner for the Police Integrity Commission to report annually on the exercise of powers under covert search warrants by police officers and members of staff of the New South Wales Crime Commission and the Police Integrity Commission, respectively.

Schedule 1 [49] and [50] amend Schedule 5 to the principal Act to enable the making of savings and transitional regulations and to make savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 1 [2], [6], [8]–[13], [15], [17]–[19], [22], [25]–[27], [30]–[32], [34]–[39], [41] and [44] are consequential amendments.

Schedule 2 Amendment of other Acts and regulation

Schedule 2.1 makes consequential amendments to the Law Enforcement (Powers and Responsibilities) Regulation 2005.

Explanatory note page 6

Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009

Explanatory note

Schedule 2.2 inserts a note in the New South Wales Crime Commission Act 1985 to draw attention to the capacity for covert search warrants to be obtained by the New South Wales Crime Commission.

Schedule 2.3 amends the Terrorism (Police Powers) Act 2002 to enable eligible persons executing covert search warrants under that Act to exercise the powers described in the third paragraph of the Overview to this Bill.