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# Corruption risks associated with the Execution of Search Warrants: A Review of Compliance with NSW Police Force Policies & Guidelines

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## 1. INTRODUCTION

The execution of search warrants by the New South Wales Police Force (NSW Police Force) is governed by the Law Enforcement (Powers and Responsibilities) Act 2002 (the Act) and the NSW Police Force Standing Operating Procedures – Search Warrants (the SOPs).[1] This Research and Issues Paper presents the results of a Police Integrity Commission (PIC) project, codenamed Project Ostara, which sought to examine how well the NSW Police Force is managing the corruption risks associated with searches.

### 1.1 Why did the PIC undertake Project Ostara?

Investigations conducted by the Royal Commission into the NSW Police Service (Royal Commission), and subsequently the PIC, have revealed a number of instances of officers engaging in serious acts of corruption during searches. As outlined in the subsections appearing below, both Commissions have reported cases of, amongst other things, officers stealing cash and drugs during searches. The opportunities for corruption connected with the execution of searches have not diminished over time. Indeed, the main reason the PIC decided to undertake this project was that the opportunities for corruption arising from this policing activity are ongoing. It is relevant to note that the NSW Police Force search warrant SOPs warn officers that the searching of premises and the seizure of property and exhibits is a 'high risk policing function' given the opportunities and temptations officers face when locating stolen goods, illegal drugs and money.[2]

#### *1.1.1 Royal Commission findings*

The Royal Commission was established in 1994 to investigate the existence and extent of corruption in the NSW Police Force[3] and other related matters. A number of police officers provided evidence to the Royal Commission in relation to

[1] The search warrant standing operating procedures referred to in this Research and Issues Paper were issued in June 2009. While a new version of the SOPs was released in December 2010, these were not in force at the time the PIC was conducting its research or preparing this paper.
[2] *NSW Police Force Standing Operating Procedures – Search Warrants*, 12 June 2009, p. 26
[3] The NSW Police Force was then known as the NSW Police Service.

misconduct that occurred during searches. In its final report the Royal Commission found that:

> Several members of the North West Region Major Crime Squad admitted to the regular theft of money during the execution of search warrants, on some occasions representing part of the monies found and sometimes the whole of the monies found. Rarely were they the subject of complaints, but where complaints were made, the police involved were invariably given time to prepare a story before interview.
>
> In view of the 'staggering' amounts of drug money washing around and the ease with which it could be picked off, none of the officers lost any sleep over these practices. Similarly, few of the drug dealers seemed overly concerned about losing their money, no doubt because it was regarded as par for the course, was soon earned again, and was better not available as proof of their dealing.[4]

In response, the NSW Police Force introduced a number of measures aimed at reducing the opportunities for corruption during searches. Amongst those measures was a requirement that an independent police officer attend to ensure compliance with procedures and act as a deterrent against corrupt conduct. The Royal Commission indicated while these processes had the capacity to reduce opportunities for corruption during searches, they were not failsafe:

The Royal Commission (1994-97) heard evidence that acts of police corruption frequently took place during the execution of search warrants. In response, the NSW Police Force introduced a number of measures aimed at reducing the opportunities for corruption associated with this policing activity. Amongst other things, the NSW Police Force required that an independent officer attend and monitor each search and that searches be filmed.

> … since it is always conceivable that in the case of a search the observer or other personnel deployed to secure integrity will themselves be corrupt, or that something untoward will occur out of their sight and hearing.[5]

The NSW Police Force also introduced Standing Operating Procedures for the execution of search warrants in January 1997, which required, amongst other things, the presence of a video operator to film the execution of search warrants.[6]

### *1.1.2 Police Integrity Commission investigation: Operation Florida*

In July 2000 the PIC commenced Operation Florida, which arose from a joint NSW Crime Commission/NSW Police Force Investigation. Amongst other things, Operation Florida exposed evidence of police officers engaging in acts of corruption in connection with the execution of search warrants from the late 1980s to early 2001. Evidence obtained during Operation Florida demonstrated that:

> … corrupt police officers would assess the subject of the search warrant and the circumstances of the search to determine whether there was any prospect of stealing funds from the subject. The decision as to whether the search recipient

[4] *Royal Commission into the NSW Police Service, Final Report, Volume I: Corruption*, May 1997, p. 118.
[5] *Royal Commission into the NSW Police Service, Final Report, Volume II: Reform*, May 1997, pp. 429-430.
[6] *Royal Commission into the NSW Police Service, Final Report, Volume II: Reform*, May 1997, p. 428.

> was susceptible to theft apparently depended on the individual circumstances of the search, the officers present, whether cash was located at the scene and the likelihood of complaint.[7]

In evidence provided to the PIC, the two principal targets of the investigation, Senior Constables Patison and Jasper both admitted to 'exaggerating' the grounds for search warrants by providing false information on the applications.[8]

Evidence was obtained during Operation Florida that a number of officers who acted as independent observers were corrupt and received money stolen during searches.[9] Jasper told the PIC that they often asked one particular officer, Sergeant Peattie, to be the independent officer for the execution of search warrants because of his tolerant attitude toward their misconduct:

> Q: Was there a system in place in relation to the execution of search warrants where the independent officer was chosen depending on the expectations of what would happen at the search warrant job?
> A: Yes, we took Detective Sergeant Peattie.
>
> Q: On the basis that he was a sympathiser and would be tolerant of rorting?
> A: Yes.[10]

Operation Florida, an investigation conducted by the PIC, revealed a number of instances of police officers stealing money during searches. This investigation also revealed cases where the measures introduced by the NSW Police Force to reduce the opportunities for corruption during searches, namely the use of independent observers and the filming of searches, had been subverted by corrupt officers.

Operation Florida also revealed evidence of video operators not performing their duties during searches. On one occasion, the video operator placed the camera on a table in the premises and left it there unused. On another occasion, the video operator claimed that the battery was flat and subsequently did not film the search. On both occasions, cash was stolen during the execution of the search by a corrupt officer.[11]

In its June 2004 Report to Parliament on Operation Florida, the PIC indicated that the evidence obtained during the investigation 'revealed a failure by officers to follow Standing Operating Procedures, a failure of supervision and a lack of functioning equipment for use during searches'.[12] The report concluded that the lack of supervision was one of the major reasons corruption was able to flourish:

> Much of the corrupt conduct exposed during these hearings extended to the relevant supervisors in each unit. Predictably, the evidence showed that anti-corruption guidelines and other management tools were of little value in preventing police corruption if the supervisors were aware of the corruption and willingly participated in it or turned a blind eye.[13]

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[7] Police Integrity Commission Report to Parliament, Operation Florida, Volume 1, June 2004, p.10.
[8] Police Integrity Commission Report to Parliament, Operation Florida, Volume 1, June 2004, p.55.
[9] Police Integrity Commission Report to Parliament, Operation Florida, Volume 1, June 2004, p.22.
[10] PIC Transcript, MJ Jasper, 18 October 2001, p. 445.
[11] Police Integrity Commission Report to Parliament, Operation Florida, Volume 1, June 2004, pp.13 & 22.
[12] Police Integrity Commission Report to Parliament, Operation Florida, Volume 1, June 2004, p. xv.
[13] Police Integrity Commission Report to Parliament, Operation Florida, Volume 1, June 2004, p. 4.

The PIC made two recommendations aimed at reducing the opportunities for corruption associated with the execution of search warrants:

1. That NSW Police give priority to improving technological resources, for example the provision of smaller and more efficient cameras for use during the execution of search warrants, and

2. That from time to time Local Area Commanders accompany police during the execution of search warrants, and check and/or watch the videos taken during the execution of search warrants, to raise the level of supervision in this area.[14]

Operation Cobalt revealed evidence of a police officer soliciting a bribe from a person whose premises were to be the subject of a search. This allowed the person time to destroy incriminating material.

In March 2008 the PIC gave evidence to the Committee on the Office of the Ombudsman and Police Integrity Commission (the Committee) that its recommendations from Operation Florida in connection with search warrants had not been adequately implemented. Furthermore, despite requests, the PIC indicated the NSW Police Force had not proposed alternative strategies as to how the outcomes envisaged by these recommendations might be achieved.

Following Operation Florida, the PIC made two recommendations aimed at reducing opportunities for corruption associated with the execution of searches. The PIC subsequently gave evidence to its Parliamentary Committee that neither recommendation was adequately implemented by the NSW Police Force.

The Committee reported the evidence given by the Commission on this issue in the following terms:

> … the Commissioner and the Director of Intelligence and Executive Services gave evidence that while it was decided not to take further action to progress these two recommendations, the execution of search warrants is still considered an area for misconduct risk. One way the Commission proposes to do further work in this area is to conduct project work examining compliance by police with their own search warrant policies and procedures.[15]

### *1.1.3 Police Integrity Commission investigation: Operation Cobalt*

In 2004 the PIC commenced an investigation codenamed Operation Cobalt following receipt of information of a suspicious relationships between a serving police officer, Detective Sergeant Chris Laycock, and a criminal. The investigation revealed that Laycock, together with his criminal associates, was involved in a significant level of corrupt conduct, including extortion, theft, perverting the course of justice and the unauthorised release of confidential information.[16]

Amongst other things, the investigation uncovered evidence of Laycock soliciting a bribe from a person whose premises were to be the subject of a search. In September 2004 the simultaneous execution of search warrants on persons of

[14] Police Integrity Commission Report to Parliament, Operation Florida, Volume 2, June 2004, p. 501.
[15] Parliament of NSW, *Report on the Tenth General Meeting with the Police Integrity Commission*, Report No3/54 – June 2008, pp. 2-3.
[16] Police Integrity Commission Report to Parliament, Operation Cobalt, December 2005, p. I.

interest in an Australia-wide investigation focusing on the possession and downloading of pornographic images of children was planned by policing agencies throughout the country. Within NSW, each Local Area Command took responsibility for the execution of search warrants within its geographical area. Laycock was the representative for the Local Area Command where he was stationed and received a dossier of information on each person of interest within the boundaries of the command. In a PIC hearing, Laycock gave evidence that before the warrants were executed, he and a criminal associate visited one of the persons of interest and, introducing themselves as police officers, advised him that a search warrant was to be executed on his premises in three days. They advised him to remove any incriminating information from his computer and destroy his credit cards. During the conversation they also solicited money from him and it was agreed that he was to pay them a sum of $4000.[17]

## 1.2 Project aims

The aims of this project were to:

- identify the corruption risks associated with the execution of search warrants;
- develop an understanding of the current processes and systems used by the NSW Police Force to plan and execute search warrants;
- establish if NSW Police Force officers are adhering to those aspects of the NSW Police Force's search warrant procedures which contribute to the management of the risks of corruption;
- assess whether the current SOPs are adequate in managing corruption risks; and
- identify if there are opportunities for the corruption prevention aspects of the SOPs to be strengthened and, if required, provide advice and recommendations for improvements.

This project did not seek to:

- inquire into the conduct of individual officers;
- examine *all* aspects of the NSW Police Force search warrant policies and procedures; or

[17] Police Integrity Commission Report to Parliament, Operation Cobalt, December 2005, pp. VI – VII.

- revisit or review the merits of the two recommendations made in the PIC's Operation Florida report.

## 1.3 Corruption risks associated with searches

A corruption risk can be regarded as 'a risk that arises from an opportunity or workplace vulnerability for an employee to engage in corruption or some other form of misconduct'.[18] As mentioned above, Project Ostara sought to assess whether the NSW Police Force search warrant SOPs are effective in managing the corruption risks that arise from exercising this policing activity and whether there are opportunities for improvement. Before it could consider this, however, the PIC first needed to identify, based on its investigations and those of the Royal Commission, the major corruption risks associated with the execution of search warrants.

It is possible to view the search warrant process in terms of three sequential stages: pre-execution, execution and post execution. The main corruption risks associated with searches arise during the first two stages: pre-execution and execution.

It is possible to view the search warrant process in terms of three sequential stages, namely: pre-execution, execution and post-execution. While it is conceivable that opportunities for corruption may arise in all three stages, the principal risks are associated with the first two – pre-execution and execution. It is noted that the focus of this paper is on the execution phase.

Importantly, the PIC was not able to assess all known corruption risks associated with the use of search warrants. Project Ostara focused on the examination of official NSW Police Force records that are created in the process of planning, executing and reporting on the outcomes of searches and which correspond to, or capture information on, specific procedural steps. The scope of the project was, therefore, determined by the types of records that were available for examination.

The two subsections appearing below outline the types of risks that pertain to the first two stages in the search warrant process – pre-execution and execution.

### *1.3.1 Corruption risks: pre-execution stage*

In the period preceding the execution of a search warrant, there are risks that:

- the grounds for a search may be exaggerated or fabricated for corrupt purposes in the search warrant application (for example, to facilitate the theft of drugs or cash from a criminal); and

- a corrupt officer may, once an application has been approved and an operational plan settled, provide forewarning or a tip off to the person or persons whose premises are to be searched.

[18] Police Integrity Commission, Project Manta, Report 2, *Managing Command Misconduct Risks*, March 2011, p. 147.

Tipping off criminals about planned or impending searches is a well-established corruption risk. However, in the absence of documentation that could be examined to assess how well the NSW Police Force is managing this risk, it was necessary to exclude it from the scope of the project.

Exaggerating or fabricating the grounds for a search is likewise an aspect of the search warrant process where there are opportunities for corrupt conduct. As outlined in the methodology section below, the PIC investigated whether or not it could assess the extent to which the NSW Police Force is managing this risk and, to that end, obtained and examined copies of the search warrant applications and operational orders for each of the warrants within the sample. However, not having access to the operational information and intelligence used in the preparation of each of the search warrant applications in the sample, the PIC was unable to assess how well the NSW Police Force is managing this risk.

In the pre-execution phase, there are risks that the grounds for the search may be fabricated or exaggerated for corruption purposes. There is also a risk that the person whose premises are to be searched may be tipped off.

### *1.3.2 Corruption risks: execution stage*

During the execution phase, absent counter-measures (such as use of independent observers) or in circumstances where counter-measures have been subverted, opportunities for corruption can arise in terms of:

- the theft of drugs and/or cash or other items of value; and
- the planting of evidence.

Search warrants can result in the discovery of very substantial amounts of cash and other commodities, particularly illegal drugs. An opportunity for theft arises from the fact that cash and some prohibited drugs are highly portable and can be secreted in clothing, or otherwise hidden, and smuggled out of a premises being searched.

In the execution phase, there are risks that items may be stolen from the premises being searched or evidence planted. Project Ostara focused on the execution phase of the search warrant process.

The risk of theft during a search is significantly amplified by the fact that, in many, if not most circumstances, this corrupt activity works to the advantage of the criminal in whose possession illegal items are located. It is preferable for a criminal to have their stash of drugs or illegally-acquired cash stolen by corrupt police than it is to face a custodial sentence for their possession. This can be regarded as a consensual act of corruption, given that both the officer and the criminal obtain a benefit. Victim complaints are unlikely in such circumstances.

The second major opportunity that can arise during the execution of search warrants relates to the planting of evidence for the purpose of unlawfully securing a criminal conviction. A major difference between this risk and that of theft from a search warrant is that, unlike theft from criminals, the planting of evidence is not a consensual act of corruption. For this reason, it seems more likely that an act of corruption where evidence is planted would be the subject of a complaint.

Given the availability of official records pertaining to the execution of search warrants, Project Ostara focused on examining the key corruption risks that arise from this part of the process – namely theft and the planting of evidence.

# 2. METHODOLOGY AND SAMPLING PROCEDURES

## 2.1 Search warrant procedures that seek to manage corruption risks

As indicated above, one of the aims of this project was to develop an understanding of the current processes and systems used by the NSW Police Force to plan and execute search warrants. The PIC examined the NSW Police Force Intranet for documents that provide corporate guidance on the performance of this policing activity. The following were identified as being relevant and were subsequently reviewed:

- *NSW Police Force Standing Operating Procedures – Search Warrants;*
- *Law Enforcement (Powers and Responsibilities) Act 2002; and*
- *NSW Police Force Handbook.*

With the assistance and advice of the NSW Police Force Professional Standards Command, the PIC collected and assessed all records created in accordance with these policy documents in connection with a sample of three search warrants. This was done with the aim of identifying those procedural steps that: contribute to the management of the two corruption risks associated with the execution phase of the search warrant process mentioned above; and were capable of being assessed within the limitations of the records and information sources available to the PIC. The following procedural steps were accordingly identified as being potentially relevant in managing the risks of corruption:

- the making of applications for search warrants under section 60 the Act;
- the drawing up and issuing of operational orders;
- the filming of searches, including the filming of exhibits found during searches *in situ*;
- the attendance of independent observers at searches;

- the making of announcements to the occupiers of premises to be searched: that officers are authorised by warrant to enter the premises; and giving the occupier the opportunity to allow entry into, or onto, the premises (pursuant to section 68 of the Act);

- the serving of occupier's notices on the occupiers of the premises being searched, or persons who appear to be occupiers (pursuant to section 67 of the Act);

- the issuing of a two-part caution to persons who are present while a search warrant is being executed and whose actions are being filmed by the police video operator or whose conversations are likely to be recorded by the microphone on the camera;

- the recording of relevant information from exhibits seized during searches in exhibit books; and

- the recording of relevant summary information from searches on the NSW Police Force computer system – COPS.

The PIC then identified the NSW Police Force record types that correspond with, or capture information on, these procedural steps. The following record types were identified through this process:

- search warrant applications;

- Independent Observer Field Forms;

- exhibit book entries from searches;

- search warrant operational orders;

- COPS Event reports on searches; and

- video recordings of searches.

Copies of these records were then obtained from the NSW Police Force in connection with a larger sample of search warrants. The details of the PIC's sampling strategy are outlined below.

Through its analysis of this second and larger sample, the PIC found that some of the procedural steps that contribute to the management of corruption risks were not capable of being adequately evaluated based on the information available to the PIC, while others that had initially been assessed as contributing to the

management of corruption risks played little, if any, role of this kind. Nonetheless, in the interests of completeness, the results of the PIC's research and analysis concerning the compliance of the NSW Police Force with these procedural requirements are presented in this paper.

The procedural steps that subsequently became the focus of Project Ostara, therefore, were those that were capable of being assessed with the information the PIC had available to it and those that, following the analysis of the sample, the Commission concluded played a direct role in managing the corruption risks. The procedural steps that fell into this category were:

- the filming of searches, including the filming of exhibits found during searches *in situ*;
- the attendance of independent observers at searches; and
- the recording of relevant information from exhibits seized during searches in exhibit books.

Table 1 demonstrates the linkages between: the corruption risks examined in Project Ostara (ie theft and the planting of evidence); the procedural steps that seek to manage the risks; and the records that correspond with, or capture information on these steps.

**Table 1. Procedural steps that contribute directly to the management of corruption risks assessed by the PIC**

| Corruption Risks | Procedural steps to manage corruption risks | Records |
|---|---|---|
| Theft of drugs, money or other items | • Videotaping of search<br>• Attendance of independent observer<br>• Recording of exhibits | • Video tape of search<br>• Independent Observer Field Form<br>• Exhibit book |
| Planting of evidence | • Videotaping of search<br>• Attendance of independent observer<br>• Recording of exhibits | • Video tape of search<br>• Independent Observer Field Form<br>• Exhibit book |

## 2.2 Audit methodology

One of the aims of Project Ostara, as noted above, was to establish if NSW police officers are adhering to those aspects of the NSW Police Force's search warrant procedures which contribute to the management of the risks of corruption. The PIC decided to use a compliance audit methodology to address this aim.

The PIC examined the audit methodologies employed by a number of organisations nationally and internationally and, on this basis, developed its own approach. In broad terms, the PIC's method involved:

- reviewing compliance of a sample of NSW Police Force search warrants with statutory and regulatory requirements, directives and procedures that seek to manage the risk of corruption and other forms of misconduct;
- identifying the consequences of non-compliance in terms of the impact on the NSW Police Force; and
- identifying if there are opportunities for the corruption prevention aspects of the SOPs to be strengthened and, if required, provide advice and recommendations for improvements.

## 2.3 Sampling strategy

The NSW Police Force executes a large number of search warrants each year. Between 2006 and 2008 the average number of search warrants executed by that agency exceeded 3000 per annum. Table 2 shows the numbers of search warrants executed from 2006-2009. For practical reasons, therefore, the PIC

decided to audit a representative sample of search warrants executed by the NSW Police Force rather than the entire population of search warrants over a one or two-year period.

**Table 2. Total number of search warrants executed by NSW Police Force from 2006 to 2009**

| Year | 2006 | 2007 | 2008 | 2009 |
|---|---|---|---|---|
| Total | 2,923 | 3,019 | 3,121 | 2,081[19] |

To obtain a representative sample of search warrants the PIC used a proportionate stratified sampling technique. The sample included:

- search warrants executed by each of the six regions in the NSW Police Force as well as the State Crime Command; and
- search warrants executed by commands that executed a relatively large number of search warrants, as well as by commands that executed a smaller number of search warrants.

The PIC began with a list of all search warrants executed by each command for each of the months July 2009, August 2009, September 2009 and October 2009. This information was then grouped in terms of region. The sampling strategy involved randomly sampling commands from within each region and then sampling search warrants executed by the sampled commands.

Some regions executed more search warrants than others over the four month July to October 2009 period, with the number of search warrants executed by the different regions ranging from 78 to 161. The PIC sampled approximately one in every eight search warrants conducted by each region. Hence, while search warrants from each region were included in the sample, the number of search warrants sampled from each region was proportionate to the number of search warrants executed in that region.

Four commands were sampled from each of the six regions together with four squads within the State Crime Command, resulting in a total of 28 commands/squads being approached for this study. These commands were selected using the following process. Within each region, commands were categorised into those that had conducted a relatively large number of search warrants during the period and those that had conducted a relatively small number

[19] These figures were provided to the PIC by the NSW Police Force on 25/8/2009 and therefore do not include search warrants executed during the remaining months of 2009.

of search warrants. Random numbers were used to select two commands that had executed a relatively large number of search warrants and two that had executed a relatively small number of search warrants from each region.

The number of search warrants sampled from each of these 28 commands/squads was proportionate to the number of search warrants conducted by these commands. The group of sampled search warrants for each command was identified by the month(s) in which these search warrants were undertaken. A total of 104 search warrants were included in the final sample.

In December 2009 the PIC wrote to each of the 28 sampled commands/squads and, in connection with each of the search warrants within the sample, requested copies of records identified as being relevant to the management of corruption risks. Each of the 28 commands/squads responded providing records for all 104 search warrants within the sample. This material was then checked for completeness and, in cases where records were found to be missing, follow up requests were made to the NSW Police Force for missing items.

Following a review of the records obtained from the commands, the PIC decided to exclude six search warrants from the initial sample of 104. The reasons for this were as follows:

- one was a notice to produce documents that had been miscategorised as a search warrant;
- one was exclusively for downloads from mobile phones seized under other search warrants; there was no requirement in this case for the NSW Police Force to create the range of documents relevant to the PIC's project;
- three were 'owned' by another command that was not part of the sample group; and
- one related to a sensitive, active investigation; the NSW Police Force requested that this investigation be excluded from the PIC's project.

The final sample considered in the PIC's project therefore consisted of 98 search warrants. All records received were examined for compliance with the relevant requirements of the SOPs and the Act. It is noted that all search warrant videos were viewed by the PIC as part of this process.

## 3. RESULTS

The following section presents the results of the PIC's research. It describes the extent to which the searches within the sample complied with those specific

procedural steps identified by the PIC as being relevant to the management of the different corruption risks. As indicated above, the NSW Police Force records that correspond with these procedural steps were used by the PIC as the basis for its assessment.

All results from the PIC's research are presented in the following section, including those that, while not directly pertaining to the way in which the NSWPF manages corruption risks, are relevant to the NSWPF in respect of the management of the use of search warrants.

A discussion of the implications of the results described below is provided in section 4.

## 3.1 Search warrant applications

*What is the corruption or other risk?*

Requests for search warrants are approved or rejected by authorised officers on the basis of applications made by police. There is a risk that the grounds for a warrant may be exaggerated or fabricated in circumstances where:

- corrupt officers are seeking to conduct a search to steal from the premises the subject of the search, plant evidence or engage in some other form of corrupt conduct; and

- the grounds for a warrant either do not exist or need to be embellished in order for the warrant to be approved.

*What are NSW Police Force officers currently required to do?*

Section 60 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (the Act) states that an application for a search warrant (except a telephone warrant) must be in writing to an authorised officer while section 62 of the Act specifies in more detail what kind of information should be included in the application for a search warrant.

*How did the PIC assess compliance?*

As indicated above, the PIC did not have access to the operational information or intelligence used by police in the preparation of each of the search warrant applications in the sample. It was, therefore, unable to verify whether the grounds for the warrants accurately reflected the information on which they were based. For this reason, the PIC determined that it was unable to assess the extent to which the NSW Police Force is managing the risk of officers exaggerating or fabricating the grounds for a search warrant.

However, so as to evaluate whether or not officers were complying with their obligations under section 60 to submit an application in writing to an authorised officer, the PIC considered whether all sections of each search warrant application had been completed.

*What did the PIC find?*

The PIC received copies of search warrant applications for each of the 98 search warrants within its sample. Based on a review of this material, the PIC concluded that all 98 applications complied with the requirements of section 60 of the Act.

## 3.2 Video recording of searches

*What is the corruption or other risk?*

As indicated above, the video recording or filming of search warrants was one of the counter-measures introduced by the NSW Police Force during the Royal Commission to help manage the corruption risks associated with the execution of searches. In the absence of effective counter-measures such as this, opportunities for corrupt conduct can arise during the execution of a search in terms of the theft of drugs, money or other items or the planting of evidence.

*What are NSW Police Force officers currently required to do?*

According to the NSW Police Force, the video recording of a search 'provides the most reliable account of what occurred and serves as an additional valuable tool to eliminate both corruption and unjustified complaints'. [20]

The SOPs state:

> Where applicable/available, the role of the Video Operator is essential in recording the location, securing and movement of 'things' during the execution of a search warrant. The Video Operator is not to take any part in the actual search of the premises and is to act in response to directions from the Commander/Case Officer, including when to commence the video recording.[21]

The SOPs provide the following instructions with regard to the video recording of search warrants:

- The Video Camera Operator will remain clear of the operational area until the Operation Commander or Case Officer isolates and contains the premises.

[20] *NSW Police Force Standing Operating Procedures – Search Warrants*, *Annexure D*, *Video Recording*, 12 June 2009, p. 26.
[21] *NSW Police Force Standing Operating Procedures – Search Warrants*, 12 June 2009, p. 10.

- As property, money or drugs are located, the Video Camera Operator will be notified and the item/s will be filmed *in situ*.
- The video recording should record the location of items found through to the recording of those items. This includes weighing drugs and counting money.
- The Video Camera Operator is to ensure that the video camera records the execution of the search warrant from the time the police arrive at the premises to the time they leave, as directed by the Operation Commander or Case Officer. Do not turn off the video camera while executing the search warrant.
- Enter the tape/recording medium up as an exhibit.
- The Video Operator is responsible for the continuity of the video tape/recording until it is secured.[22]

While the SOPs make it clear that filming the execution of a search warrant is not mandatory, they do not provide guidance as to the circumstances where a search should be filmed and cases where it may be unnecessary.

The SOPs are specific in terms of what is expected of the video operator. The SOPs indicate that:

While the search warrant SOPs make it clear that filming the execution of a search warrant is not mandatory, they do not provide guidance as to the circumstances where a search should be filmed and cases where it may be unnecessary.

- Where a video camera is to be used in an operation, the operator should have a reasonable degree of competence in operating the specific camera to be used.
- The video camera should be capable of continuous recording of time and date onto a suitable recording medium.
- Sufficient batteries should be on hand to ensure the type of recording required can be completed.
- Unfavourable inferences can be drawn at court if the recording is stopped before a job is complete or at a crucial moment. The excuse that 'the batteries were flat' is not a professional answer.
- Check the camera is recording correctly by rewinding a portion and reviewing what you have recorded through the view finder.[23]

*What issues relating to the filming of search warrants did the PIC examine?*

The PIC examined the following issues in connection with the filming of search warrants, the results of which are presented below:

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[22] NSW Police Force *Standing Operating Procedures – Search Warrants*, *Annexure D, Video Recording*, 12 June 2009, pp. 26-29.
[23] *NSW Police Force Standing Operating Procedures – Search Warrants, Annexure D, Video Recording*, 12 June 2009, pp. 27-28.

1. whether or not a search was filmed; and

2. whether or not the search warrant videos were of a satisfactory standard.

### 3.2.1 Provision of functioning video recordings

*How did the PIC assess compliance?*

The SOPs, as noted, require officers to film searches where they consider such action to be 'applicable'. Copies of all videos for the searches within the sample were requested by the PIC for the purposes of Project Ostara. In circumstances where the records of the NSW Police Force indicated that a search had been filmed, but where a functioning video recording was not available to be provided to the PIC (for example, as a result of being lost), the PIC concluded that the warrant had not complied with the requirements of the SOPs. In circumstances where a functioning search warrant video was provided to the PIC in response to its request or where officers had judged that the filming of a search to be not 'applicable', the PIC concluded that the warrant complied with the requirements of the SOPs.

*What did the PIC find?*

Of the 98 search warrants sampled, the NSW Police Force provided the PIC with copies of 88 search warrant videos, all of which were functioning. The reasons given for not providing the remaining ten videos are outlined below.

In the case of six search warrants, the NSW Police Force advised that one video recording was lost, one was accidentally destroyed and four were unavailable due to the malfunctioning of camera equipment during the search. Given that the NSW Police Force determined that filming the searches in these cases was 'applicable', the PIC considers that all six did not comply with the SOPs.

In the case of six of the 98 search warrants sampled, the NSW Police Force advised that one video recording was lost, one was accidently destroyed and four were unavailable due to the malfunctioning of camera equipment during the search.

In the case of four search warrants, the officers involved in executing the searches formed the view that taking video footage was unnecessary or unwarranted. Hence the searches were not filmed. These warrants were executed for the following purposes:

- one was for telephone call charge records;
- one related to the seizure of a document and CCTV footage;
- one search warrant was a document seizure only; and
- one search warrant was for medical records.

In view of the fact that filming searches is not mandatory, the decisions taken by officers not to film these four search warrants can be seen to be in compliance with the requirements of the SOPs.

### *3.2.2 Quality of search warrant videos*

*How did the PIC assess compliance?*

The PIC assessed a video recording as being of 'poor quality' if:

- the video footage was unfocused and/or hazy;
- the video tape stopped frequently during the search or prior to the completion of the search, thus not recording the seizure of all exhibits; or
- the audio quality of the video was poor, making it difficult to determine whether the occupiers were cautioned or if the occupier's notice was properly explained to them.

*What did the PIC find?*

As indicated in the previous section, the PIC received copies of 88 search warrant videos from the NSW Police Force. On viewing these video tapes, the PIC assessed that 80 complied with the SOPs and eight were of poor quality and failed to comply with the SOPs. Of the eight assessed to be of poor quality:

On viewing the search warrant video tapes obtained for Project Ostara, the PIC assessed that eight within the sample were of poor quality and failed to comply with the search warrant SOPs.

- one video recording was unfocused and hazy;
- in two video recordings, the sound dropped out frequently;
- two video recordings were very dark and it was not possible to see what occurred during the search; and
- three video recordings stopped prior to the completion of the search and several exhibits that were listed in the exhibit book were not recorded on video.

## 3.3 Independent observers at search warrants

*What is the corruption or other risk?*

Like the filming of searches, the deployment of independent observers during searches was introduced by the NSW Police Force during the Royal Commission to help manage the corruption risks that can arise during the execution of a search.

In addition, circumstances can arise during searches where property is damaged or the actions of officers in some other way leave the occupier feeling aggrieved. The presence of an independent observer allows an occupier to voice concerns or complaints to a police officer not directly involved in the search. It is the duty of the independent observer to report any complaints or indiscretions to the case officer, operation commander or relevant Local Area Commander.[24]

*What are NSW Police Force officers currently required to do?*

The NSW Police Force SOPs state that an independent observer appointed to oversight the execution of a search warrant should be briefed on all relevant aspects of the search and the responsibilities of their role.[25] The role of the independent observer is to act as an impartial observer. Their presence during the execution of a search is intended to ensure the propriety and legality of the search. An independent observer, according to the SOPs, should not be connected to an investigation in relation to which a search warrant is executed.

Additional duties of the independent observer are: to confirm that the occupant of the premises is served with the occupier's notice; to be aware of and view exhibits located during the search; to endorse the Property Seizure/Exhibit Form at the completion of the search; and to verify that the occupier has had the opportunity to view and sign the form. At the completion of the search the case officer is required to advise the occupier that any concerns or issues they have can be communicated to the independent observer.

Under the current SOPs for search warrants, an independent observer is required to complete the Independent Observer Field Form (IOFF). The IOFF requires the independent observer to record information in relation to the pre-execution phase, the actual execution of the search warrant and the post execution phase. The IOFF seeks to ensure that the search warrant SOPs have been followed and the *Law Enforcement (Powers and Responsibilities) Act 2002* complied with. This form also provides the independent observer an opportunity to record any additional comments or complaints from the occupiers of the premises searched. Independent observers are required, under the SOPs, to make contemporaneous notes during the search on the IOFF.

The IOFF, when completed, provides a record of the observations of the independent observer and verification that they were satisfied that nothing untoward occurred during the course of the search. In the absence of a completed IOFF, it is not possible to verify that the independent observer was satisfied with all aspects of the search. Importantly, however, the SOPs do not currently indicate

[24] *NSW Police Force Standing Operating Procedures – Search Warrants*, 12 June 2009, p. 17.
[25] *NSW Police Force Standing Operating Procedures – Search Warrants*, 12 June 2009, p. 11.

whether or not commands need to retain a copy of the completed IOFFs following the conclusion of the search.

The NSW Police Force SOPs state that for a serious or complex investigation the independent observer should be a Commissioned Officer, a substantive Sergeant or some other police officer of similar supervisory experience. For standard investigations, the SOPs indicate that officers with less seniority, that is a substantive Sergeant or some other officer of similar supervisory experience, can perform the role of an independent observer.

*What issues relating to the use of an independent observer did the PIC examine?*

The PIC examined the following issues in connection with the use of the independent observers, the results of which are presented below:

1. whether or not an independent observer was present during the execution of a search warrant;

2. whether or not the independent observer was of an appropriate rank; and

3. whether or not the IOFF was completed.

As noted, the SOPs state that the independent observer should not be connected to the investigation in relation to which the search is to be executed. The PIC was not in a position to assess whether or not this was the case in relation to the searches in this sample.

It is reasonable to infer that, as they are currently worded, the SOPs require the presence of an independent observer during the execution of *all* search warrants, although this is not explicitly stated.

### 3.3.1 Presence of independent observers at searches

*How did the PIC assess compliance?*

In assessing whether or not an independent observer was present during the execution of the searches in the sample, the PIC reviewed, where they were available, both the search warrant videos and the completed Independent Observer Field Forms (IOFF) from the searches. The PIC decided that, in order for a search warrant to be considered to have complied with the SOPs, and to provide a degree of independent verification of compliance, there needed to be footage from the search warrant video clearly demonstrating the presence of an independent observer. A completed IOFF by itself was not considered enough to demonstrate that an independent observer was present.

*What did the PIC find?*

Of the sample of 98 search warrants, the PIC found that in 86 cases there was sufficient evidence to conclude that an independent observer was present[26] and determined that the NSW Police Force complied with the requirements of the SOPs in each of these instances.

For one search warrant the NSW Police Force provided a valid reason for an independent observer not being present.[27]

The PIC examined the reasons provided by the NSW Police Force as to why, in relation to the remaining eleven search warrants, an independent observer was either not present or there was no video evidence indicating their presence. These are outlined below.

In the case of one search warrant, a civilian – an employee of the storage facility where the search was being conducted – acted as an independent observer at the request of the NSW Police Force case officer. According to information provided by the NSW Police Force, the search warrant was going to expire before the arrival of the police officer who was rostered to act as the independent observer. The use of a civilian as the independent observer was approved by the investigation co-ordinator. While it is accepted that there were operational reasons as to why a police officer was not used as independent observer in this particular case, and that the actions of the case officer were approved by the investigation co-ordinator, the SOPs do not make allowance for non-police to perform the role of an independent observer. Insofar as the SOPs prescribe that only officers of certain ranks and levels of experience are qualified to act as independent observer (see

[26] It is noted that the PIC was able to determine that independent observers were present in all eight searches in relation to which the video recordings were otherwise assessed as being of poor quality (see 3.2.2).
[27] This search warrant was a crime scene warrant. The PIC's review of NSW Police Force procedures in relation to crime scene warrants did not identify any requirements for an Independent Observer to be present at a crime scene warrant.

next section), it is questionable that a non-police officer would be able to adequately and effectively perform the role of independent observer. For this reason, the PIC considers that this search warrant did not comply with the requirements of the SOPs regarding the use of an independent observer.

Four search warrants were not filmed as a result of officers forming the view that this action was 'not applicable' in the circumstances. As noted, the filming of search warrants is not, under the SOPs, mandatory. Therefore, the PIC was unable to verify whether or not an independent observer was present during the execution of the search warrant.

Six search warrant videos, as indicated previously in this paper, were either lost, inadvertently destroyed or otherwise unavailable due to the malfunctioning of camera equipment. It is conceded that in these cases it is possible an independent observer was present. However, absent video evidence showing this to be the case, any claim that the search was supervised by an independent observer cannot be satisfactorily verified.

### *3.3.2 Rank of independent observers*

*How did the PIC assess compliance?*

The PIC assessed whether or not the independent observers used in the searches within the sample were, consistent with the requirements of the SOPs, of a sufficiently senior rank. It did this by:

- listening to the case officer introducing the independent observer on the search warrant videos;
- checking the IOFFs (which, when completed, are supposed to contain the independent observer's rank and signature); and
- checking the name of the independent observer against the NSW Police Officer list.[28]

*What did the PIC find?*

Of the 86 searches where there was sufficient evidence to conclude that an independent observer had been present:

- 61 held the rank of Inspector or Chief Inspector;
- 20 held the rank of Sergeant;

[28] The NSW Police Force provides the PIC with a monthly electronic list of all sworn officers.

- Three held the rank of Senior Sergeant; and
- Two held the rank of Leading Senior Constable.

The PIC assessed that all 86 search warrants complied with the requirements of the SOPs.

### 3.3.3 Provision of Independent Observer Field Forms

*How did the PIC assess compliance?*

In assessing the extent to which the search warrants in the sample complied with the requirement for IOFFs to be completed, the PIC considered whether or not:

- the NSW Police Force had provided hard copies of the IOFFs to the PIC;
- all sections of the IOFFs had been completed in accordance with the SOPs and signed by the independent observers.

*What did the PIC find?*

Seventy-seven IOFFs were provided by the NSW Police Force, all of which were assessed by the PIC to be compliant with the requirements of the SOPs.

In the case of one search warrant, which was a crime scene warrant, the PIC judged that there was a valid reason as to why an independent observer was not present, and consequently no IOFF provided.

One command, as indicated above, used a civilian as an independent observer as opposed to a police officer and as a consequence, no IOFF was completed. The PIC assessed that this search did not comply with the requirements of the SOPs.

The NSW Police Force did not provide copies of IOFFs in relation to 19 search warrants. Of these:

- seventeen commands provided no explanation as to why they did not provide the PIC with a copy of an IOFF;
- one command stated it was unable to locate the IOFF; and
- one command informed the PIC it did not keep copies of the IOFF.

As indicated above the current SOPs do not specify whether or not commands are required to keep copies of completed IOFFs. This being the case, the PIC was

unable to assess whether or not these 19 search warrants complied with the requirements of the SOPs with regard to IOFFs.

## 3.4 Exhibit management

*What is the corruption or other risk?*

As indicated above, the SOPs recognise that the searching of premises and the seizure of property and exhibits is a 'high risk policing function' given the opportunities and temptations officers face when locating stolen goods, illegal drugs and money.[29] Two of the strategies mentioned above that are currently used by the NSW Police Force to manage these risks are the filming of searches and the use of an independent observer. It is also essential, however, that adequate records are created in relation to drugs, cash and other items of value that are discovered during the course of a search.

*What are NSW Police Force officers currently required to do?*

The SOPs indicate that the exhibit officer is responsible for all exhibits located during the execution of a search and must ensure that all items are properly recorded in a Property Seizure/Exhibit Form. The SOPs also indicate that the search warrant video recording should be treated as an exhibit.[30]

At the conclusion of the search the exhibit officer is required to present the occupier with the completed Property Seizure/Exhibit Form for inspection. When the occupier is satisfied that all items listed have been located in the premises searched, the form is signed. A copy of this form is provided to the occupier.

The exhibit officer is also responsible for conveying the exhibits to an appropriate police station and ensuring they are accurately recorded. It is the responsibility of the operation commander/case officer to ensure that all exhibits have been accounted for and entered into an exhibit book.

The NSW Police Force Handbook indicates that officers involved in receiving exhibits should:

- ensure exhibits are recorded in an exhibit book at a police station as soon as possible; and
- ensure a cross reference to the exhibit book page number is made in the relevant COPS event while reference is made to the event number on the exhibit book page.[31]

[29] *NSW Police Force Standing Operating Procedures – Search Warrants*, 12 June 2009, p. 26
[30] *NSW Police Force Standing Operating Procedures – Search Warrants*, 12 June 2009, p. 16.
[31] NSW Police Force Handbook, "Property seized as an exhibit", March 2010, p. 282.

As noted previously in this report, the SOPs require that property, such as drugs or money, found during a search should be filmed *in situ*. The SOPs further require that the weighing of drugs and the counting of money be filmed. This being the case, the PIC decided to compare the video recordings from the searches with the exhibit book entries to assist in determining the accuracy of both the exhibit book and the video recording.

*What issues relating to exhibit management did the PIC examine?*

The PIC examined the following issues in connection with exhibit management, the results of which are presented below:

1. whether or not the exhibit book entries from the sample complied with the requirements contained in the Police Handbook; and

2. whether or not exhibits listed in the exhibit book corresponded with the footage of the exhibits captured on the search warrant video.

### *3.4.1 Exhibit books*

*How did the PIC assess compliance?*

In assessing the extent to which the search warrants in the PIC's sample complied with the requirements for exhibit books specified in the Police Handbook, the PIC considered whether or not:

- the NSW Police Force had provided a hard copy of the exhibit book entry in connection with the search warrants in the PIC sample;

- the corresponding COPS Event number was recorded on the exhibit book page;

- the name of the offender was recorded;

- the search warrant video was entered as an exhibit in the exhibit book.

*What did the PIC find?*

Of the 98 search warrants sampled, the PIC received copies of 89 exhibit book entries from the NSW Police Force, all of which complied with the requirements of the Police Handbook and SOPs. With regard to the remaining nine cases, there were valid reasons as to why exhibit book entries were not provided in connection with seven warrants, insofar as no exhibits had been seized during the searches. In relation to two warrants, officers did not make exhibit book entries for the items seized. The PIC found that:

- one search warrant was executed for the purpose of obtaining electronic downloads of telephone call charge records and therefore did not result in any physical exhibits being seized that needed to be manually recorded and managed in accordance with the Police Handbook; and

- one search warrant was for the sole purpose of seizing documents, the items seized through which were recorded within the NSW Police Force's investigations management system, e@gle.i.[32]

In relation to the search warrant that was executed for the purpose of obtaining electronic downloads of telephone call charge records, the PIC was unable to assess compliance as there is no guidance provided by the SOPs with regard to recording and managing non-physical exhibits.

In relation to the second search warrant mentioned above the PIC concluded that the NSW Police Force did not comply with the requirements of the SOPs.

As noted, the PIC also assessed whether or not the search warrant videos had been entered as exhibits, as is required by the SOPs. The PIC found that in 85 cases, exhibit books did *not* list the search warrant video as an exhibit. In only three cases, exhibit book entries listed the search warrant video as an exhibit.[33]

### 3.4.2 Comparison of exhibit book entries with search warrant videos

*How did the PIC assess compliance?*

In assessing the extent to which the exhibits listed in the exhibit books corresponded with the search warrant videos, the PIC:

[32] It is noted that the search warrant SOPs make no provision for documents seized during searches being recorded on e@gle.i.
[33] The NSW Police Force provided the PIC with a total of 88 search warrant videos.

- viewed all videos provided by the NSW Police Force and compared the items seized with the items listed on the Property Seizure/Exhibit Form; and

- compared the exhibit book entries for each search warrant with the corresponding Property Seizure/Exhibit Form.

*What did the PIC find?*

In 74 of the search warrants sampled, exhibits were filmed and complied with the requirements of the SOPs.

Of the remaining 15 search warrants, it is noted that:

- the PIC did not receive search warrant videos[34] from the NSW Police Force in relation to seven cases;

- the video recordings provided by the NSW Police Force in relation to six cases did not capture footage of the exhibits as per the requirements of the SOPs due to major shortcomings with the quality of the footage caused by technical problems or operator error;

- the NSW Police Force advised that it did not film one search, as to do so would have been impractical; more than 1000 DVDs were seized during this search and subsequently entered as exhibits; and

- some of the exhibits seized by police in relation to one search, clothing worn by juveniles suspects in an alleged sexual assault, were seized by searching officers off camera.

In relation to the last point above, it is noted that this search did not comply with the requirements of the SOPs. The clothing should have been seized as exhibits and filmed *in situ*.

## 3.5 Operational orders

*What is the corruption or other risk?*

On reviewing the copies of operational orders received from the NSW Police Force in connection with the sample, the PIC concluded that the drawing up and issuing of these documents plays little, if any, role in the management of corruption risks. However, insofar as the operational orders are an important planning document that forms part of the governance framework for searches, they contribute to

[34] These also included searches where the NSW Police Force advised the PIC that it did not consider video recordings were necessary, i.e. one search related to a document and CCTV footage search.

ensuring that searches are planned and executed in a manner that is accountable and transparent. For this reason, the PIC decided to include the findings regarding operational orders in this report.

*What are NSW Police Force officers currently required to do?*

According to the SOPs operational orders must be prepared before any warrant is executed and should be readily available for the information of all personnel involved in the search. Operational orders contain general information about the subject matter of the investigation in respect of which the search warrant has been granted, the reasons for the use of the search warrant and a description of the premises to be searched. Operational orders are in template format and NSW police officers are required to complete different sections prescribed in the template.

*How did the PIC assess compliance?*

Current NSW Police Force SOPs stipulate that:

> Any such orders are to be written where possible but may be oral in exigent circumstances. In these circumstances the orders should be written down at the first available opportunity.[35]

The PIC was not able to assess the accuracy of the information contained in the operational orders. Instead, it focused its assessment on:

- whether or not the NSW Police Force had provided hard copies of operational orders to the PIC; and
- whether, of those that were provided to the PIC, all obligatory sections of the proforma had been completed.

*What did the PIC find?*

Of the 98 search warrants sampled, the PIC received copies of 77 operational orders, 76 of which complied with the requirements of the SOPs.[36] The PIC examined the remaining 21 to establish whether there were legitimate reasons why the operational orders were not available.

In the case of 16 search warrants, the NSW Police Force did not provide copies of operational orders and furnished no reasons as to why they were not available. The PIC assessed that these 16 cases did not comply with the requirements of the

[35] *NSW Police Force Standing Operating Procedures – Search Warrants*, 12 June 2009, p. 11.
[36] The operational orders for one search warrant did not include a reason for the search and as such was assessed as being 'not properly' completed by the PIC.

SOPs. In the case of two search warrants, the NSW Police Force provided reasons as to why no operational orders were completed: one was for a telephone warrant and the other was for medical records only. Based on the requirements of the SOPs the PIC does not consider that compliance occurred.

In the case of three search warrants, the NSW Police Force informed the PIC that, due to urgent operational considerations, there was no time for the preparation of operational orders. The advice received from the NSW Police Force was that operational orders were not, in fact, required in relation to these cases. The PIC considers that these cases do not comply with the requirements of the SOPs. The SOPs indicate that while operational orders may be given verbally, they should be written down at the first available opportunity.[37] This ensures that a record is retained of key information pertaining to a search warrant.

## 3.6 Recording of COPS Event

*What is the corruption or other risk?*

COPS[38] Event reports are prepared as part of the post-execution phase of a search and provide an account of the search. Once placed on COPS, these reports are widely available in the NSW Police Force. On reviewing the copies of the COPS Event reports received from the NSW Police Force in connection with the sample, the PIC formed the view that these reports play little, if any, role in the management of the corruption risks examined in this project. However, this process represents an important part of the NSW Police Force's corporate record-keeping process for searches and, as such, is an important governance measure. In general terms, the absence of such records could directly contribute to flawed future operational decision-making. For this reason, the PIC decided to include the findings of its research regarding the creation and inclusion on COPS of Event reports on searches in its report.

*What are NSW Police Force officers currently required to do?*

The SOPs state that each search warrant should be the subject of a COPS report containing all relevant details.[39]

[37] *NSW Police Force Standing Operating Procedures – Search Warrants*, 12 June 2009, p. 11.
[38] The Computerised Operational Policing System (COPS) is the NSW Police Force's main data system.
[39] *NSW Police Force Standing Operating Procedures – Search Warrants*, 12 June 2009, p. 11.

*How did the PIC assess compliance?*

In assessing the extent to which the search warrants in the sample complied with the requirement of the SOPs regarding the creation of COPS reports, the PIC considered whether or not:

- the NSW Police Force provided either a hard copy of a COPS Event report or the COPS Event number to the PIC; and
- the COPS Event report presented an accurate picture of the events that took place during the search when compared with the video recording of the search.

*What did the PIC find?*

Of its sample of 98 search warrants, the NSW Police Force provided the PIC with 98 copies of, or reference number for, COPS Event reports. As indicated previously in this report, the PIC received 88 video recordings of search warrants. Of this number, all 88 COPS Event reports contained information that accurately described the events that occurred during the search.

In the case of the remaining 10 search warrants, the PIC was unable to assess the accuracy of the COPS Event reports due to the absence of a video recording. As indicated in Section 3.2.1 in the case of six search warrants the NSW Police Force did not provide video recordings and in the case of four search warrants the officers involved in executing the searches formed the view that taking a video footage was unnecessary.

## 3.7 Pre-search announcement: Section 68 Law Enforcement (Powers and Responsibilities) Act 2002

*What is the corruption or other risk?*

Under the *Law Enforcement (Powers and Responsibilities) Act 2002,* immediately before commencing a search, officers must make an announcement to the occupier of the premises. Details of this announcement are provided below. On reviewing the footage of the search warrant videos in the sample, the PIC formed the view that the making of pre-search announcements plays little if any role in the management of corruption risks. However, it is important to note that the making of this announcement is required by legislation. Failure to make it could, therefore, adversely impact on the integrity of the search and raise questions about the ethical conduct of the officers involved. For this reason, the PIC decided to include the findings of its research regarding the making of pre-search announcements in its report.

*What are NSW Police Force officers currently required to do?*

Section 68 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (the Act) requires that one of the officers executing a warrant must:

a) announce that [police are] authorised by the warrant to enter the premises, and

b) give any person then in or on the premises an opportunity to allow entry into or onto the premises.

*How did the PIC assess compliance?*

The PIC assessed compliance with section 68 of the Act by viewing all videos provided by the NSW Police Force to ascertain if the case officers followed these steps. The PIC was unable to assess compliance with section 68 in the absence of a search warrant video.

*What did the PIC find?*

Of its sample of 98 search warrants, the PIC found that 67 complied with the requirements of section 68 of the Act while four did not. In the case of 17 search warrants, the PIC found that there was a valid reason as to why it was unnecessary for officers to follow the steps prescribed in section 68:

- in 14 search warrants no occupier was at home during the execution of the search;
- one search warrant involved a direct request for telephone call charge records;
- one search warrant was a covert search; and
- one search warrant occurred at a storage facility and therefore there was no occupier present.

The PIC was unable to assess compliance with section 68 of the Act in the case of ten search warrants. In relation to these:

- the NSW Police Force failed to provide video recordings for six search warrants to the PIC;
- the video recording of one search warrant failed at the beginning of the search; and

- the NSW Police Force informed the PIC that there was no requirement for a video recording in three search warrants, given that these were executed for the purposes of obtaining documents and CCTV footage.

## 3.8 Occupier's notice: Section 67 of the Law Enforcement (Powers and Responsibilities) Act 2002

*What is the corruption or other risk?*

Under the *Law Enforcement (Powers and Responsibilities) Act 2002,* after entering the property the subject of the search warrant, officers must serve the occupier with a notice. Details of this announcement are provided below. On reviewing the footage of the search warrant videos in the sample, the PIC formed the view that the serving of occupier's notices plays little if any role in the management of corruption risks examined in this project. However, as with the making of the pre-search announcement, the serving of the occupier's notice is required by legislation. Failure to serve it could likewise, therefore, adversely impact on the integrity of the search and raise questions about the ethical conduct of the officers involved. For this reason, the PIC decided to include the findings of its research regarding the serving of occupier's notices in its report.

*What are NSW Police Force officers currently required to do?*

Section 67 indicates that an officer executing a warrant must:

a. on entry into or onto the premises or as soon as practicable after entry, serve the occupier's notice on a person who appears to be an occupier of the premises and to be of or above the age of 18 years, or

b. if no such person is then present in or on the premises, serve the occupier's notice on the occupier of the premises, either personally or in such other manner as the authorised officer who issued the warrant may direct, as soon as practicable after executing the warrant.[40]

According to section 67, an occupier's notice must be in a form prescribed by the regulations and specify the name of the person who applied for the warrant, the date and the time when the warrant was issued and the address or other description of the premises the subject of the warrant. Section 67 further indicates that an occupier's notice must contain a summary of the nature of the warrant and the powers conferred by the warrant.

*How did the PIC assess compliance?*

[40] *Law Enforcement (Powers and Responsibilities) Act 2002*, section 67.

The PIC assessed compliance with section 67 of the Act by viewing all search warrant videos provided by the NSW Police Force to ascertain if the case officers complied with this requirement. The PIC was unable to independently assess compliance with section 67 of the Act in the absence of a video recording.

*What did the PIC find?*

Of the 98 search warrants within the PIC's sample, the NSW Police Force complied in 73 cases with the requirements of section 67 *The Law Enforcement (Powers and Responsibilities) Act 2002* and:

- served 65 occupier's notices in person on the occupiers of the premises searched; and

- in relation to eight search warrants, left a copy of the occupier's notice in the premises due to the absence of the occupier during the search.

In the case of seven search warrants, the NSW Police Force did not provide an occupier's notice to the occupier and failed to comply with the requirements of *The Law Enforcement (Powers and Responsibilities) Act 2002.* In the case of 2 search warrants, the PIC found that there was a valid reason as to why the NSW Police Force did not follow the steps contained in section 67 of the Act:

- one search warrant involved a direct request for telephone call charge records; and

- one search warrant was a covert search, i.e. police searched the premises without the knowledge of the occupier.

The PIC was unable to assess compliance with section 67 of the Act for the remaining 16 search warrants for the following reasons:

- the NSW Police Force did not provide video recordings for six search warrants to the PIC;

- the video recording in relation to one search warrant failed at the beginning of the search;

- the NSW Police Force informed the PIC that there was no requirement for a video recording in three search warrants, given these were executed for the purposes of obtaining documents and CCTV footage;

- in one search the occupier of the premises (a hotel room) was not present and the NSW Police Force served the occupier's notice on the hotel manager;
- in one search, according to the IOFF, the occupier's notice was served on the occupier in custody;
- in one search the occupier had been arrested and no mention was made of the occupier's notice;
- in one search the occupier was not at home but was subsequently served with an occupier's notice, according to NSW Police Force documentation obtained for Project Ostara;
- in one search the occupier was not present but, according to the COPS Event report, subsequently attended a police station where the occupier's notice was served; and
- in one case the occupier, according to the IOFF, was at a police station while the search was being conducted and was issued with an occupier's notice while there.

## 3.9 Information provided by officers to persons filmed during searches - requirements of SOPs

*What is the corruption or other risk?*

Under the SOPs occupiers and other persons whose actions are being filmed must be provided with a caution and, secondly asked if they have any objection to their verbal comments being the subject of an audio recording. Further details about these requirements are provided below. On reviewing the footage of the search warrant videos in the sample, the PIC formed the view that these steps play little if any role in the management of corruption risks examined in this project. However, both actions are required under the SOPs and are intended to ensure that persons whose premises are the subject of a search are informed of their rights. Failure to observe these steps could adversely impact on the integrity of a search, raise questions about the ethical conduct of the officers involved and result in occupiers not being informed of their rights. For this reason, the PIC decided to include the findings of its research regarding these procedural steps.

*What are NSW Police Force officers currently required to do?*

The SOPs indicate that a video camera is a listening device within the meaning of the *Surveillance Devices Act, 2007*. Under the SOPs all persons whose actions are being video recorded, or whose verbal comments are likely to be received by the microphone and recorded, should be cautioned that the video camera is in operation and that anything they say or do may be used in evidence. The caution is as follows:

> A video/audio recording device is operating. You do not have to say or do anything but anything you say or do will be recorded and may be used in evidence. Do you understand that? (Record any response given).[41]

The SOPs also require that officers ask the occupier of the premises if they have any objections to their comments being the subject of an audio recording. The SOPs require that the following question be asked:

> Do you have any objection to our conversation being recorded? (Record any response given).
>
> If a person objects to their voice being recorded, the objection should be recorded by the video camera, following which the audio capability of the camera is to be switched of.[42]

*How did the PIC assess compliance?*

The PIC assessed compliance by viewing all videos provided by the NSW Police Force to ascertain if the above steps were performed. The PIC was unable to assess compliance with this requirement in the absence of a search warrant video.

*What did the PIC find?*

As indicated above, the first step officers are required to follow is to caution all persons whose actions are being video recorded, or whose verbal comments are likely to be received by the microphone and recorded, that anything they say or do may be used in evidence.

Of its sample of 98 search warrants, the PIC found that the caution was issued in 55 cases and was not issued in 17.

The second step officers are required to follow, also as indicated above, is to ask the occupier of the premises if they have any objections to their comments being the subject of an audio recording. In relation to this, the PIC found that occupiers

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[41] *NSW Police Force Standing Operating Procedures – Search Warrants*, 12 June 2009, p. 28.
[42] *NSW Police Force Standing Operating Procedures Search Warrants* – 12 June 2009, p. 29.

were asked in 10 cases and not asked in 62. In the cases where the occupiers were asked, none requested that the audio facility be turned off.

In the case of a further 17 search warrants, the PIC found that there was a valid reason why it was unnecessary for officers to observe these steps. These were as follows:

- in 14 search warrants, no occupier or suspect was at home during the execution of the search warrant;
- one search warrant involved a direct request for telephone call charge records;
- one search warrant was a covert search; and
- one search warrant occurred at a storage facility and therefore there was no occupier present.

The PIC was unable to assess compliance in relation to these steps for the nine remaining search warrants. The reasons for this are as follows:

- the NSW Police Force did not provide a video recording for six search warrants to the PIC; and
- the NSW Police Force informed the PIC that there was no requirement for a video recording in three search warrants, given that these were executed for the purposes of obtaining documents and CCTV footage.

## 4. DISCUSSION

The two principal procedural steps used by the NSW Police Force to manage the corruption risks associated with the execution of search warrants remain the filming of searches and the use of independent observers. When performed in accordance with the search warrant SOPs, the PIC considers that these measures provide a reasonable and appropriate means for managing the corruption risks.

The results of Project Ostara revealed high levels of compliance by officers with a number of procedural requirements governing the use of search warrants in the NSW Police Force. Some of the findings in connection with the main strategies used to manage the risks of corruption, however, merit further comment and discussion.

Of the procedural steps employed by the NSW Police Force in connection with the execution of search warrants, two stand out as being of particular significance in managing the risks of corruption: the filming of searches by a video operator and the use of independent observers. Both the independent observer and the video operator attend searches to monitor the activities of the searching officers and to ensure this policing activity is carried out in accordance with the SOPs and to act as a deterrent against any wrongdoing. Neither participates in the actual search and is therefore unencumbered by other duties. When performed in accordance

with the SOPs, the PIC considers these two procedural steps provide a reasonable and appropriate means for managing the two main corruption risks that can arise during the execution of searches, namely theft and the planting of evidence.

The results of Project Ostara showed that in 14 per cent of cases sampled, the search warrant video was either of poor quality or was not able to be provided to the PIC.

## 4.1 Video recording of searches

The results of Project Ostara showed that in 14 per cent of cases sampled, the search warrant video was either of poor quality or was not able to be provided to the PIC. In 8 per cent of cases sampled the quality of the video recording fell short of a satisfactory standard whereas in 6 per cent of cases, the recording was lost, accidentally destroyed or otherwise unavailable due to the malfunctioning of camera equipment.

The PIC acknowledges that technical problems and human error can occur in the filming of searches and accepts that a blank or poor quality search warrant video is not in and of itself indicative of corrupt conduct. It is equally important to acknowledge, however, the adverse consequences that can arise from a search warrant video being blank or of poor quality. The PIC considers these to be threefold. First, the filming of searches provides a degree of assurance as to the integrity and propriety of a search. In circumstances where the video is not available, or is of poor quality, that assurance can be undermined. Unavailable or poor quality search warrant videos can:

The filming of searches provides a degree of assurance as to the integrity and propriety of a search. In circumstances where the search warrant video is not available or is of poor quality, that assurance can be undermined.

- give rise to a perception that the recording was deliberately destroyed, lost or was purposefully filmed in such a manner as to be of poor quality, to cover-up the wrongdoing of officers; and
- preclude or limit the extent to which the search warrant, or an aspect of the search, can be reviewed at a later date.

Second, the PIC's research shows that the search warrant video recording provides a critical means of verifying that a range of other procedural steps intended to assure the transparency and the accountability of the process were adhered to. In circumstances where the search warrant video is unavailable or of poor quality, a consequence may be that the NSW Police Force is unable to determine that other procedural steps have been followed. Amongst other things, the search warrant video recording enables the NSW Police Force to verify that:

- an independent observer was present at the search;
- exhibits were managed and recorded appropriately;
- occupiers were cautioned of their rights; and
- that certain requirements of LEPRA were complied with.

Third, the filming of searches provides a degree of protection for officers in the event that there is some suggestion that they engaged in wrongdoing. The availability of a video of a search can provide clear evidence that officers performed their duties ethically and effectively. In the absence of video evidence of this nature, or in circumstances where the quality is poor, it is possible that questions may linger or be inadequately addressed as to the conduct of officers.

**Case Study 1 – Consequences of search warrant video being unavailable or of poor quality**

One of the searches in the PIC's sample for Project Ostara resulted in the discovery of a large amount of drugs and chemicals used in the cultivation of hydroponic plants. In response to the PIC's request for relevant records in connection with this search, however, the NSW Police Force advised that it appeared that an error had occurred either during recording of the search or the downloading process and no functioning video recording was available. The corollary of this is that, notwithstanding the fact that the search had uncovered evidence of commercial-scale drug activity, one of the principal means used by the NSW Police Force to assure the propriety of the search was unavailable.

In the absence of the video recording the PIC was unable to assess whether or not:

- an independent observer was present during the execution of the search;
- police announced to the occupiers that they were authorised to enter the premises;
- the items listed in the exhibit book were correct;
- the occupiers were informed of their rights;
- the occupier were presented with the occupier's notice; or
- the COPS Event report provided an accurate account of the search.

It is relevant to note that the SOPs provide guidance on the use of video equipment in searches in an attempt to ensure that the footage and audio recording are of good quality. The SOPs note that the consequences of a search warrant video being unavailable or of poor quality due to an equipment failure can be significant. The SOPs state:

> Unfavourable inferences can be drawn at court if the recording is stopped before a job is complete or at a crucial moment. The excuse that 'the batteries were flat' is not a professional answer.[43]

[43] *NSW Police Force Standing Operating Procedures – Search Warrants*, 12 June 2009, p. 27.

Project Ostara is the first study of its kind by the PIC on the corruption risks associated with the execution of search warrants. As such, there are no statistics available for comparative purposes. However, on the face of it, given the consequences that can arise from a search warrant video being unavailable or of poor quality, the results presented above seem high and suggest that attempts should be made to improve compliance levels.

### *4.1.1 Review & compliance arrangements for search warrant videos: Command Management Framework (CMF)*

The Command Management Framework (CMF) is a risk-based, self-assessment audit process used by commands in the NSW Police Force. Under the provisions of the CMF, commands are required to:

- maintain a centralised search warrant video register; and
- conduct weekly checks to ensure that all tapes issued and used during the execution of search warrants are stored securely and are being reviewed for compliance and training issues.

It can be inferred from the second dot point above that in order for a search warrant video to be reviewed for 'compliance and training issues' it should be viewed (that is, the footage on the video watched).

As mentioned above, in six cases from the sample the search warrant video was lost, accidentally destroyed or otherwise unavailable due to the malfunctioning of camera equipment. Significantly, however, in each of these cases the command responsible for the custody of the search warrant video was unaware that the video was, for whatever reason, unavailable until the PIC made its request. This would indicate that the CMF checking process had not been applied in these instances or that the commands, when they had conducted their CMF checks, had not viewed the videos.

## 4.2 Use of independent observers

The use of independent observers during searches is the second key procedural step used by the NSW Police Force to manage the risk of corruption during the execution of search warrants. The results of the PIC's research showed that in 88 per cent of search warrants sampled independent observers were present at the execution of search warrants. The main factor contributing to the remainder of the sample not complying with the requirement to have an independent observer present was the absence of video recordings of searches, as indicated in the key findings of this paper. To provide a degree of independent verification of

Most independent observers in the cases sampled by the PIC were commissioned officers. All were experienced police officers. This would seem to be an indication that commands are prepared to invest the time of their senior staff in assuring the propriety of searches.

compliance, the PIC concluded that there needed to be footage from the search warrant video clearly demonstrating the presence of an independent observer.

Most independent observers in the cases sampled by the PIC were commissioned officers (that is, senior officers of the rank of Inspector or above). All were experienced police officers. This would seem to be an indication that commands are prepared to make their senior staff available to assure the propriety of searches. That commands are prepared to invest the time of their senior staff in performing the role of independent observers is a positive sign and a reflection that the role is taken seriously. Having senior officers present during the execution of search warrants enhances the deterrent value of the measure.

For a deterrent to be effective, it is generally accepted that, amongst other things, the persons at whom it is directed must feel that there is a reasonable likelihood that their aberrant behaviour will be detected. An insight into the deterrent value of having an independent observer present during searches may be provided by the evidence given by two former corrupt officers to the PIC in Operation Florida. Former Senior Constable Patison indicated that at a search warrant he was involved in executing, he had decided not to steal a sum of cash as he was concerned that his actions may have been noticed by the independent observer who was in attendance:

Q: Why did you leave the money there?
A: Well, I didn't think I could get the money out of the premises sir.

Q: Without being observed?
A: That's right.

Q: Was there an independent officer present throughout the search?
A: There was – there was sir.

Q: Were you concerned that he may have observed you take the money out of the drawer and secret it?
A: Yes, sir, and there was – there were other police there – I think there was a few other police there and I – once again, I didn't want to take any risk of anyone else seeing me do something wrong, sir.[44]

While not directly related to the use of independent observers, former Senior Constable Jasper's evidence revealed that while serving in a previous position, the prospect of being scrutinised by another officer – in this case his unit leader – was sufficient to deter corrupt conduct from occurring. Jasper told the PIC that:

> … in his previous posting to the Anti-Theft Squad such corruption was not possible because there was a much tighter level of supervision in that the unit leader was

[44] Police Integrity Commission Transcript, DP Patison, 12 December 2001, pp. 1820-1821.

invariably present when premises were searched and search procedures were followed as close to the guidelines as possible.[45]

Notwithstanding the value of independent observers being used at searches, it must be conceded that it is not possible to measure the extent to which they deter officers from engaging in corrupt conduct.

Like the filming of searches, the presence of an independent observer offers a degree of assurance as to the integrity and propriety of a search. Presently, however, the SOPs do not contain a requirement that IOFFs be retained by commands. As indicated above, the results of the PIC's research show that in 19 per cent of cases sampled, no IOFF was provided to the PIC.

When completed, an IOFF provides a record of the observations of the independent observer and verification that nothing untoward occurred during the course of the search. In terms of consequences, the absence of an IOFF may:

- detract from the assurance provided by an independent observer having attended the search and otherwise discharged their duties effectively, particularly in circumstances where questions are raised about the propriety of a search;

- result in allegations of misconduct or poor customer service made by occupiers not being registered by the NSW Police Force as formal complaints and dealt with in accordance with the established complaint process; and

- result in observations made by the independent observer of wrongdoing or impropriety on the part of police officers involved in the search not being registered by the NSW Police Force as formal complaints and dealt with in accordance with the established complaint process.

Officers involved in conducting searches are also provided a degree of protection in circumstances where IOFFs are completed and securely stored. As in the case of search warrant videos, the presence of an IOFF may provide valuable exculpatory evidence in circumstances where there is an allegation of wrongdoing. Where an IOFF is not available questions may linger or be inadequately addressed as to the conduct of officers.

The two case studies that appear below illustrate the consequences that can arise in circumstances where an IOFF is either not completed or not properly stored.

[45] Police Integrity Commission, Report to Parliament, Operation Florida, Volume 1, p. 55.

**Case Study 2 –Complaint from occupier of damage to property**

The video recording of one search in the sample shows that officers were already inside the premises of the subject of the search when the video recording commenced. No mention was made as to how the officers gained entry into the premises.

At the completion of the search the independent observer asked the occupiers if they had any complaints in the manner in which the search was conducted. The occupiers complained about the forced entry which resulted in the front door being damaged. The occupiers stated that they would have opened the door to the police if only they had knocked. There was no mention of this complaint in the COPS Event report and in the absence of the IOFF no record of this complaint, except on the actual video recording.

**Case Study 3 –Search that netted large amount of drugs**

In this case, which formed part of the sample, police located a very large amount of prohibited drugs. A video recording was made of the search and there was video evidence that the independent observer had been in attendance. The NSW Police Force, however, informed the PIC that the independent observer did not complete an IOFF. No further explanation as to why the independent observer failed to complete this form was provided to the PIC. In this case, notwithstanding the fact that a large quantity of drugs were seized, there is no record available for external scrutiny that documents the independent observers findings and comments about the search and which provides verification that the search was conducted in accordance with NSW Police Force SOPs.

# 5. WHERE TO FROM HERE?

Based on the findings from its research and the discussion of those findings in the preceding section, the PIC proposes seven steps to strengthen the management of corruption and other risks associated with the use of search warrants:

1. Provide clear guidance on the reviewing and compliance management arrangements for search warrant videos.

2. Provide clear guidance as to when specific corruption prevention measures should be deployed during searches.

3. Strengthen and clarify record-keeping requirements.

4. Provide guidance on the appointment of officers responsible for performing key roles during searches.

5. Increase the amount of information captured through the filming of searches.

6. Review reasons for low compliance with requirement that occupiers be asked if they have an objection to their verbal comments being recorded.

7. Ensure that, where appropriate, guidance about the use of crime scene warrants is consistent with the search warrant SOPs.

Prior to publication, the NSW Police Force was provided with an opportunity to comment on the accuracy, findings and recommendations contained in this report. The NSW Police Force's responses to each of the PIC's recommendations are presented below.

## 5.1 Provide clear guidance on the reviewing and compliance management arrangements for search warrant videos

As noted above, the CMF requires that commands maintain a centralised register of search warrant audio visual recordings and conduct weekly checks for the purpose of ensuring that all tapes issued and used during the execution of search warrants are securely stored and reviewed for compliance and training issues.

The PIC considers the CMF as an appropriate and reasonable tool for ensuring that search warrant videos are of an adequate quality and that they are securely managed. However, as indicated above, in six cases within the sample, commands were unaware that the search warrant videos for which they had custody had been lost, accidentally destroyed or otherwise unavailable due to the malfunctioning of camera equipment. The PIC considers that either the CMF

checking process had not been applied in these instances, or that the commands, when they had conducted their CMF checks, had not viewed the videos.

As a means of strengthening the CMF process, consideration should be given by the NSW Police Force to providing clearer guidance to commands as to the checking processes they should undertake. Specifically, the CMF should be amended in such a manner as to require commands to check on a weekly basis that:

- search warrant videos are functioning and contain footage of the relevant searches;
- the quality of the search warrant videos is satisfactory; and
- all other requirements of the SOPs pertaining to search warrant videos are complied with.

In terms of ensuring the quality of the search warrant video, consideration should be given by the NSW Police Force to developing some generic quality standards. The NSW Police Force should have regard to the criteria used by the PIC in this report in section 3.2.2 to assess the quality of the search warrant videos within its sample.

**Recommendation**

1. **It is recommended that the NSW Police Force amend the CMF so as to provide additional guidance concerning the checking of search warrant videos. Specifically, the CMF should require commands, on a weekly basis, to check that:**

   a. **search warrant videos are functioning and contain footage of the relevant searches;**

   b. **the quality of the search warrant videos is satisfactory; and**

   c. **officers have complied with the requirements proposed in Recommendation 6.**

   **It is further recommended in relation to 'b' that the NSWPF develop some generic standards by which the standard of search warrant videos may be assessed.**

If no search warrants have been executed in a particular week, clearly recommendation 1 does not apply.

The NSW Police Force in its response to the draft report indicated that it supports this recommendation.

## 5.2 Provide clear guidance as to when specific corruption prevention measures should be deployed during searches

The two principal strategies used by the NSW Police Force to manage the corruption risks associated with the execution of search warrants are, as already noted: the filming of searches and the use of independent observers.

### *Filming of searches*

The search warrant SOPs do not establish a requirement for all searches to be filmed. It is, however, by inference that the reader of the SOPs arrives at the conclusion that the filming of searches is not mandatory. Rather than making an explicit statement to this effect, the SOPs suggest that the use of video operator may not be applicable in all circumstances. The SOPs state:

> Where applicable / available, the role of the Video Operator is essential in recording the location, securing and movement of 'things' during the execution of the search warrant.

Additionally, the SOPs provide no guidance as to when it is appropriate to film a search and when it is reasonable not to. Presently, it is left to the officers executing a warrant as to when they should film the search. The SOPs would be strengthened by the inclusion of some guidance as to the circumstances when filming a search is necessary and when it is not. Included in this would be information on how the filming of search warrants assists as a means of managing the risk of corruption.

### *Use of independent observers*

As they are currently worded, the SOPs do not envisage a circumstance where a search warrant would be executed without an independent observer being present. While the PIC recognises the critical role played by independent observers in the management of corruption risks, it is questionable that they are needed in each and every case a search warrant is executed. In circumstances where a search warrant is applied for and granted for the specific purpose of collecting documents and other things (such as CCTV footage) or obtaining downloads of computer files and where there is no search scene per se, it is likely that the opportunities for officers to engage in any wrongdoing, if they exist at all, would be extremely limited.

Currently, officers who do not use independent observers in circumstances where they consider them unnecessary are in breach of the NSW Police Force SOPs. Rather than maintain a provision of the SOPs which may be unnecessarily inflexible, the PIC considers that the NSW Police Force give consideration as to whether the SOPs need to be amended to allow that in certain limited circumstances, an independent observer need not attend. If the NSW Police Force does decide to remove the mandatory requirement for independent observers to attend the execution of search warrants, guidance should be provided to assist officers in making decisions of this nature. It may be possible to develop a simple test. For instance, in circumstances where there is no search scene, there may be no need for an independent observer to be present.

**Recommendation**

2. **It is recommended that the SOPs be amended to provide clear guidance to officers as to when:**

   a. **searches should be filmed and when they need not to be; and**

   b. **an independent observer should attend a search and when one is not required.**

The NSW Police Force in its response to the draft report indicated that it supports this recommendation.

## 5.3 Strengthen and clarify record-keeping requirements

### *IOFFs*

IOFFs, when completed, offer a degree of assurance as to the integrity and propriety of a search. They provide a record of the observations of the independent observer and verification that nothing untoward occurred during the course of the search. They are also a vehicle for identifying problems that occurred during searches and for recording complaints from persons whose premises have been searched. As noted in the discussion section of this paper, the absence of an IOFF may detract from the assurance provided by an independent observer having attended the search and may result in allegations of misconduct, or observations of wrongdoing or impropriety by officers, not being dealt with.

The SOPs currently do not contain a requirement that IOFFs be retained by commands. As indicated above, the results of the PIC's research show that in 19 per cent of cases sampled, no IOFF was provided to the PIC.

The current record-keeping arrangements would be strengthened if the SOPs were amended, making it mandatory for IOFFs to be retained by commands.

### *Recording of search warrant videos as exhibits*

The SOPs state that the search warrant video is to be treated as an exhibit and the original tape/CD are to be entered as an exhibit in the exhibit book. However, as indicated in the results of this paper, only 3 per cent of search warrants had the video recording listed in the exhibit book. According to advice from the NSW Police Force, the current arrangement may be administratively burdensome for officers and may have led them to recording these items as exhibits elsewhere.

The current arrangement requiring search warrant videos to be entered as exhibits should be reviewed as should the suggestion that it is administratively burdensome. This review should also consider whether there are satisfactory alternative recording-keeping strategies available for search warrant videos.

### *Operational orders*

As indicated in the results section, operational orders contain general information about the subject matter of the investigation in respect of which the search warrant has been granted, the reasons for the use of the search warrant and a description of the premises to be searched. Operational orders must be prepared before any warrant is executed and should be readily available for the information of all personnel involved in the execution of the warrant. As explained above, while operational orders do not appear to play a role in the management of corruption risks, they represent an important part of the governance framework for searches, helping to ensure that searches are planned and executed in a transparent and accountable manner.

The current version of the SOPs do not provide any guidance as to whether or not operational orders need to be retained following the conclusion of the search. As a planning document the PIC considers that the value of the operational orders extends beyond the completion of the search. The retention of these documents would enable an assessment of the effectiveness of the pre-search planning process and the extent to which the search itself adhered to the plan.

The current record-keeping arrangements would be strengthened if the SOPs were amended, making it mandatory for operational orders to be retained by commands.

**Recommendation**

3. **It is recommended that the SOPs be amended making it mandatory for the following search warrant records to be retained by commands:**

   a. **IOFFS; and**

   b. **Operational orders.**

4. **It is recommended that the NSW Police Force review the current section of the SOPs requiring search warrant videos to be recorded in the exhibit book. This review should consider whether there are satisfactory alternative recording-keeping strategies available for search warrant videos.**

The NSW Police Force in its response to the draft report indicated that it supports recommendations 3 and 4.

## 5.4 Provide guidance on the appointment of officers responsible for performing key roles during searches

The deployment of independent observers and the filming of searches, though valuable and worthwhile corruption prevention measures, are not failsafe and are capable of being subverted. As indicated earlier in this paper, there were cases identified during Operation Florida where corrupt officers used independent observers whom they knew would 'turn a blind eye' to their corrupt activities. Evidence was also revealed during this investigation of video operators not performing their duties in searches where corrupt acts took place.

It is noted that the SOPs are silent on the issue of who appoints independent observers and video operators. As a precaution to guard against the collusion of searching officers and the independent observers and/or the video operators, there may be some value in the SOPs being amended to make explicit that the operation commander appoints independent observers and video operators for the purpose of searches.

**Recommendation**

5. **It is recommended that the SOPs be amended to include a requirement that the operation commanders for the search warrants appoint independent observers and video operators.**

The NSW Police Force in its response to the draft report indicated that it supports this recommendation.

## 5.5 Increase the amount of information captured through the filming of searches

### *Introducing officers responsible for performing specific roles during searches*

The SOPs indicate that when officers attend searches, they perform specific roles, namely: case officer, video operator, independent observer, searching officers and exhibit officer. In most search warrant videos within the sample, the case officer introduced all officers involved in the search on the search warrant video. While this practice is not required by the SOPs, the PIC believes it is an effective means of demonstrating that these specific roles were, in fact, performed during the search. It also provides a video record of the officers allocated to these roles. Of particular significance this practice has the effect of demonstrating, and creating a record of the fact that, the independent observer was present.

The SOPs would be strengthened by an inclusion of a requirement that the case officer introduce to the camera officers performing specific roles in the search.

### *Commencement of search warrant video*

During its review of all search warrant videos the PIC noted that a number of videos commenced whilst NSW police were already inside the premises. The PIC was unable to determine whether or not the case officer had complied with sections 67 and 68 of LEPRA and relevant sections of the SOPs. It is the PIC's view that the video recording should commence well before NSW Police Force enters the premises. This will ensure that there are no later disputes as to how police entered the premises and also provide a record of police compliance, or non-compliance, with legislation and NSW Police Force policies and procedures.

The NSW Police Force should consider amendments to the SOPs along these lines.

### *Reading aloud exhibits seized during the search*

The PIC noted that on a number of search warrants, the exhibit officer read out all the exhibits seized to the occupier, or in the absence of an occupier, directly to the video camera. This is currently not a requirement under the SOPs. In a number of search warrants conducted, the NSW Police Force seized a large number of exhibits. This made it difficult to assess whether or not all exhibits located matched the exhibits entered into the exhibit book.

The PIC considers that the SOPs would be strengthened if they would be amended to specify that at the end of the search, each exhibit seized is read out to the occupier and recorded on video.

**Recommendation**

6. **It is recommended that the SOPs be amended to include a requirement that (in circumstances where the filming of a search warrant is warranted):**

   a. **during each search, the video operator film the case officer introducing each of the officers responsible for performing specific roles during the search;**

   b. **the video recording of searches should commence prior to officers entering the premises to be searched; and**

   c. **at the conclusion of a search, a list of the exhibits seized should be read out to the occupier and recorded on video.**

   **The PIC recognises there are circumstances where operational safety considerations preclude the video operator from entering the premises at the commencement of the search. In such circumstances the PIC suggests that the video operator, from a safe distance, videotapes officers entering the premises. Once the premises have been declared safe, the video operator can enter the premises and film the search in accordance with the SOPs.**

In its response to the draft report, the NSW Police Force indicated that it supports recommendation 6a. It advised, however, that it does not support recommendation 6b noting that it remains concerned about both operational safety issues and the potential for police methodologies to be compromised. The PIC will explore these concerns with the NSW Police Force. As part of this process the PIC

will consider whether or not satisfactory alternatives can be found to implement recommendation 6b.

The NSW Police Force has also indicated that it does not support recommendation 6c noting that the current SOPs address this issue. It is not apparent to the PIC how the current SOPs will satisfy recommendation 6c. The PIC will explore this further with the NSW Police Force. As part of this process the PIC will consider whether or not satisfactory alternatives can be found to implement recommendation 6c.

## 5.6 Review reasons for low compliance with requirement that occupiers be asked if they have an objection to their verbal comments being recorded

The PIC's research found a very poor level of compliance in relation to the requirement that officers ask occupiers whose premises are to be searched if they have any objections to their comments being the subject of an audio recording. If the occupier objects to their voice being recorded, the objection should be recorded by the video camera and the audio capability of the camera then disabled.

The PIC found that in 63 per cent of cases in the sample, occupants were not asked if they had any objections to their voice being recorded. While this needs to be considered in context of the fact that in 17 per cent of cases there was a valid reason as to why occupants were not asked if they had any objections to their voice being recorded, it remains a poor result.

In circumstances where evidence of an offence has been discovered, the omission by NSW Police Force to caution the occupier to his/her right to silence may impact on the NSW Police Force's ability to use the admissions by the occupier at a later stage. The reasons for this low level of compliance were not apparent from the material examined by the PIC as part of Project Ostara.

Consideration should be given to: canvassing both Local Area and Specialist Commands to seek information as to the reasons why compliance with this requirement of the SOPs was so low in the sample group, and, on the basis of this information, developing an agency–wide strategy to improve the level of compliance.

**Recommendation**

7. **It is recommended that the NSW Police Force:**

   a. **canvass both local area and specialist commands, as to the reasons for low compliance with the requirement to ask occupiers if they have an objection to their verbal comments being recorded; and**

   b. **develop an agency-wide strategy to improve the level of compliance with this requirement.**

The NSW Police Force has indicated that it does not support recommendation 7a stating that the recently updated SOPs contain a requirement that all persons whose actions are being recorded by the video camera are cautioned and asked whether they have any objections. It is not apparent to the PIC how the requirement to caution, which remains unchanged from the previous version of SOPs, will improve compliance. The PIC will explore this further with the NSW Police Force. As part of this process the PIC will consider whether or not satisfactory alternatives can be found to implement recommendation 7a.

The implementation of recommendation 7b will be revisited as part of the consideration of recommendation 7a.

## 5.7 Ensure that, where appropriate, guidance about the use of crime scene warrants is consistent with the search warrant SOPs

One of the search warrants within the sample was a crime scene warrant. According to a chapter on crime scenes from the *Code of Practice*[46], an application for a crime scene warrant is made in the same way as an application for a search warrant. The *Code of Practice* states that the use of assistants, execution by night and other provisions of Part 5 of LEPRA apply to crime scene warrants in the same way as they do for search warrants. However, *the Code of Practice* does not specify which, if any, parts of the search warrant SOPs are applicable to crime scene warrants. In particular, absent any requirement for the searches to be filmed or for independent observers to be present, there does not appear to be any requirement for any procedural steps to manage the risk of corruption.

46 NSW Police Force, *Code of Practice for Crime (Custody, Rights, Investigation, Management and Evidence*), version as at August 2010.

The *Code of Practice* should be reviewed to ensure that relevant provisions from the Search Warrant SOPs are reflected within it.

**Recommendation**

8. **It is recommended that the NSW Police Force review the provisions of the *Code of Practice* that relate to the use of crime scene warrants to ensure that, where appropriate, they are consistent with the search warrant SOPs.**

The NSW Police Force in its response to the draft report indicated that it supports recommendation 8.

# 6. SUMMARY OF RECOMMENDATIONS

1. It is recommended that the NSW Police Force amend the CMF so as to provide additional guidance concerning the checking of search warrant videos. Specifically, the CMF should require commands, on a weekly basis, to check that:

   a. search warrant videos are functioning and contain footage of the relevant searches;

   b. the quality of the search warrant videos is satisfactory; and

   c. all other requirements of the SOPs pertaining to search warrant videos are complied with.

   It is further recommended in relation to 'a' that the NSWPF develop some generic standards by which the standard of search warrant videos may be assessed.

2. It is recommended that the SOPs be amended to provide clear guidance to officers as to when:

   a. searches should be filmed and when they need not to be; and

   b. an independent observer should attend a search and when one is not required.

3. It is recommended that the SOPs be amended making it mandatory for the following search warrant documents to be retained by commands:

a. IOFFS; and

b. Operational orders.

4. It is recommended that the NSW Police Force review the current section of the SOPs requiring search warrant videos to be recorded in the exhibit book. This review should consider whether there are satisfactory alternative recording-keeping strategies available for search warrant videos.

5. It is recommended that the SOPs be amended to include a requirement that the operation commanders for the search warrants appoint independent observers and video operators.

6. It is recommended that the SOPs be amended to include a requirement that (in circumstances where the filming of a search warrant is warranted):

   a. during each search, the video operator film the case officer introducing each of the officers responsible for performing specific roles during the search;

   b. the video recording of searches should commence prior to officers entering the premises to be searched; and

   c. at the conclusion of a search, a list of the exhibits seized should be read out to the occupier and recorded on video.

7. It is recommended that the NSW Police Force:

   a. conduct a review, canvassing both local area and specialist commands, as a to the reasons why compliance with the requirement to ask occupiers if they have an objection to their verbal comments being recorded; and

   b. develop an agency-wide strategy to improve the level of compliance with this requirement.

8. It is recommended that the NSWPF review the provisions of the *Code of Practice* that relate to the use of crime scene warrants to ensure that, where appropriate, they are consistent with the search warrant SOPs.

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