

## Fact Sheet: Review of Covert Search Warrants & Preventative Detention Orders: Jan 2017-June 2020

### What are covert search warrants and preventative detention orders?

The *Terrorism (Police Powers) Act 2002* (NSW) (the Act) gives police special powers to prevent or respond to suspected terrorist acts.

A covert search warrant issued by the Supreme Court gives police the power to search premises without the knowledge of the owner.

Preventative detention orders made by the Supreme Court give police the power to detain a person, without charging them, for up to 14 days.

### How often did police use these powers?

Between 1 January 2017 and 30 June 2020 the police executed four covert search warrants. Police did not use the preventative detention powers in that time.

### What did police do during the covert searches?

During three of the searches police took items from the premises so they could be copied and/or tested, and then re-entered the premises to return the items.

Also, during three of the searches police

WARRANT	ITEMS SEIZED?	DNA SAMPLES COLLECTED?	RE-ENTRY?	SEARCH RECORDED ON VIDEO?	OCCUPIER'S NOTICE PROVIDED?
18-001	Yes	Yes	Yes	No	No
18-002	Yes	Yes	Yes	No	No
19-001	No	Yes	No	Partially	Yes but incomplete
19-002	Yes	No	Yes	No	No

took DNA samples from the premises (or from items seized from the premises).

### What was the Commission's review and what did it show?

The Act requires the Commission to report on the use of these powers every three years.

We found that the policies police had for using both types of powers had not been finalised and were out of date, and their forms to use the powers contained errors.

There were a number of issues with the covert searches, including:

- only one of the four covert searches was (partially) recorded on video
- the key functions of an Exhibit Officer and Independent Officer were not performed during the covert searches, and
- covert collection of DNA by police is currently unregulated.

Also, police did not comply with certain requirements in the Act. For example, police did not give proper notices to the people whose premises were covertly searched.

### What does the Commission recommend?

The Commission makes 13 recommendations to prevent future issues with the use of the powers. We recommend police improve their policies and forms and deliver training on the covert search powers. The NSW Police Force has already updated its forms to fix errors the Commission identified.

We also recommend the preventative detention powers be removed, as they are redundant and police do not have the guidance in place to make sure they would be used correctly.