



New South Wales

Law Enforcement (Powers and Responsibilities) Regulation 2016

under the

Law Enforcement (Powers and Responsibilities) Act 2002

[The following enacting formula will be included if this Regulation is made:]

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Attorney General

Explanatory note

The object of this Regulation is to remake, with some amendments, the provisions of the *Law Enforcement (Powers and Responsibilities) Regulation 2005*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The Regulation makes provision for the following matters:

- (a) the form of the following:
 - (i) applications for various kinds of warrants, and for notices requiring the production of documents by authorised deposit-holding institutions (**notices to produce documents**), under the *Law Enforcement (Powers and Responsibilities) Act 2002* (the **principal Act**),
 - (ii) records to be made by or on behalf of authorised officers in relation to their determination of such applications,
 - (iii) notices required under the principal Act to be given to occupiers of premises at which certain warrants are executed,
 - (iv) reports to authorised officers on the execution of warrants and the giving of notices to produce documents,
- (b) the issue of receipts for things seized in the execution of warrants,
- (c) the keeping of documents relating to warrants and notices to produce documents, and the inspection of those documents,
- (d) the persons who may act as custody managers for persons detained under Part 9 of the principal Act,
- (e) the guidelines to be observed by custody managers and other police officers, and the keeping and inspection of custody records, in relation to those detained persons,
- (f) the detention under Part 9 of the principal Act of vulnerable persons—that is, children, persons with impaired intellectual or physical functioning, Aboriginal persons or Torres Strait Islanders and persons of non-English speaking backgrounds,

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Explanatory note

- (g) the detention and return of vehicles that have been seized by police in connection with the public disorder emergency powers under Part 6A of the principal Act (including provisions for the payment of towing and storage fees in relation to seized vehicles),
- (h) the train and bus routes in relation to which dogs may be used to carry out general drug detection without a warrant under the principal Act,
- (i) the creation of a penalty notice offence for the offence of failing to comply with a direction of a police officer under Part 14 of the principal Act.

The Regulation also includes provisions relating to amendments made by the *Law Enforcement (Powers and Responsibilities) Amendment Act 2014* (the **amending Act**). These provisions provide for:

- (a) the kinds of persons of the same sex (other than police officers) who may conduct searches, and
- (b) the safeguards applicable to certain persons (called **protected persons**) who are in the company of police officers for the purpose of participating in investigative procedures in connection with offences under Part 9 of the principal Act, and
- (c) the forms for the summary of Part 9 of the principal Act to be given to detained persons and protected suspects by custody managers, and
- (d) the rural areas in which crime scene powers may be exercised for a period of 6 hours or less, and
- (e) the code of practice relating to the exercise of powers by police officers under Part 14 of the principal Act.

This Regulation is made under the *Law Enforcement (Powers and Responsibilities) Act 2002* (as amended by the amending Act), including sections 32 (7A) (b), 60 (1), 65 (2), 66, 67 (2) (a), 67B (3) (b), 74 (1) (f), 74A, 87M (4), 92 (3), 103 (3), 112, 120 (1) (g), 131 (1) and (2), 132, 148 (1) (c), 200A (1), 209 (1), 235 and 238 (the general regulation-making power).

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	5
2 Commencement	5
3 Definitions	5
Part 2 Warrants and notices to produce documents	
4 Form of application for warrant or notice to produce	7
5 Determination of application for warrant or notice to produce—record by eligible issuing officer	7
6 Form of warrant or notice to produce	8
7 Form of occupier’s notice: section 67 (2) (a)	8
8 Form of adjoining occupier’s notice: section 67B	8
9 Receipts for things seized	8
10 Form of report to eligible issuing officer on execution of warrant (other than covert search warrant) or giving of notice to produce: section 74	9
11 Form of report to eligible issuing officer on execution of covert search warrant: section 74A	9
12 Keeping and inspection of records	9
13 Certified records not available for inspection	10
Part 3 Investigations and questioning	
Division 1 Custody managers	
14 Designation of police stations and other places to be used for detaining persons	11
15 Appointment of custody managers for designated police stations and designated places of detention	11
16 Order of preference in relation to places of detention	11
17 Order of preference in relation to custody managers	11
18 Custody managers for New South Wales Crime Commission or Australian Crime Commission investigations	12
19 Form of summary of Part 9 of Act	13
20 Custody managers not prevented from exercising other functions	13
21 Guidelines for custody managers and other police officers	13
Division 2 Custody records	
22 Meaning of “custody record”	13
23 Separate record for each detained person	13
24 Additional matters to be recorded in custody record	13
25 Inspection of custody record	14
Division 3 Vulnerable persons	
26 Interpretation	14
27 Vulnerable persons	15
28 Custody manager to assist vulnerable person	15
29 Support person	15
30 Support person may be present during investigative procedure	16

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Contents

	Page
31 Relationship between entitlement to support persons and entitlement to consult	17
32 Child cannot waive entitlement to support person	17
33 Role of support persons during interview	17
34 Exclusion of support person from investigative procedure	17
35 Person responsible for welfare of certain detained persons or protected suspects to be contacted	18
36 Legal assistance for Aboriginal persons or Torres Strait Islanders	18
37 Cautions	18
38 Times to be disregarded in calculating investigation period	18
39 Additional information to be included in detention warrant application	19
Part 4 Public disorder emergency powers—seizure, detention and return of vehicles	
40 Definitions	20
41 Powers in relation to removal and detention of seized vehicles	20
42 Towing fee for seized vehicles	20
43 Storage fees and release of seized vehicles	21
44 Safe keeping of seized vehicles	21
45 Directions by court as to fees payable under this Part	21
Part 5 Miscellaneous	
46 Persons of the same sex (other than police officers) who may conduct personal searches	23
47 Exercise of powers at crime scenes—prescribed rural areas	23
48 Use of drug detection dogs in authorised places—prescribed train routes	23
49 Use of drug detection dogs in authorised places—prescribed bus routes	25
50 Code of practice for directions under Part 14 of Act	25
51 Records relating to detention of intoxicated persons	25
52 Failure to comply with direction—penalty notice offence and penalty	26
53 Savings	26
Schedule 1 Forms	27
Schedule 2 Guidelines for custody managers and other police officers	67
Schedule 3 Code of Practice for directions under Part 14 of Act	69

Law Enforcement (Powers and Responsibilities) Regulation 2016

under the

Law Enforcement (Powers and Responsibilities) Act 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Law Enforcement (Powers and Responsibilities) Regulation 2016*.

2 Commencement

This Regulation commences on 1 September 2016 and is required to be published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Law Enforcement (Powers and Responsibilities) Regulation 2005*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

child has the meaning given by clause 26.

detained person means a person who is detained under Part 9 of the Act.

impaired intellectual functioning, in relation to a person, has the meaning given by clause 26.

impaired physical functioning, in relation to a person, has the meaning given by clause 26.

Part 5 search warrant means a search warrant issued under Division 2 (Police and other law enforcement officers' powers relating to warrants) of Part 5 of the Act.

protected suspect has the same meaning as in section 110 of the Act.

search warrant means any of the following search warrants:

- (a) a Part 5 search warrant (other than a covert search warrant or a criminal organisation search warrant),
- (b) a covert search warrant,
- (c) a criminal organisation search warrant,
- (d) a search warrant issued under section 86 (Police may enter and search for firearms) of the Act,
- (e) a search warrant issued under Division 1 (Drug premises) of Part 11 of the Act,
- (f) a search warrant issued under a provision specified in Schedule 2 (Search warrants under other Acts) to the Act,
- (g) a search warrant issued under a provision of, or a provision made under, an Act, being a provision that provides that Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under that provision.

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Part 1 Preliminary

support person means a person who is a support person for the purposes of Division 3 of Part 3.

the Act means the *Law Enforcement (Powers and Responsibilities) Act 2002*.

vulnerable person has the meaning given by clause 27.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.
- (3) Notes included in this Regulation (except in Schedule 1) do not form part of this Regulation.

Part 2 Warrants and notices to produce documents

4 Form of application for warrant or notice to produce

- (1) For the purposes of section 60 (1) of the Act:
 - (a) Part 1 of Form 1 is the form for an application for a Part 5 search warrant (other than a covert search warrant or a criminal organisation search warrant), and
 - (b) Part 1 of Form 2 is the form for an application for a covert search warrant, and
 - (c) Part 1 of Form 3 is the form for an application for a criminal organisation search warrant, and
 - (d) Part 1 of Form 4 is the form for an application for a search warrant other than a Part 5 search warrant, and
 - (e) Part 1 of Form 5 is the form for an application for a warrant issued under section 83 (Entry by warrant where entry denied) of the Act, and
 - (f) Part 1 of Form 6 is the form for an application for a crime scene warrant issued under Part 7 of the Act, and
 - (g) Part 1 of Form 7 is the form for an application for a warrant issued under Division 2 (Use of drug detection dogs) of Part 11 of the Act, and
 - (h) Part 1 of Form 8 is the form for an application for a notice to produce documents issued under Division 3 of Part 5 of the Act.
- (2) An application for a warrant issued under section 103 (Warrant for arrest of person unlawfully at large) of the Act is to be made in the form of Part 1 of Form 9.
- (3) An application for a detention warrant issued under Part 9 of the Act is to be made in the form of Part 1 of Form 10.

5 Determination of application for warrant or notice to produce—record by eligible issuing officer

A record is to be made by or on behalf of an eligible issuing officer, in relation to each application for a warrant dealt with by the officer, in the following form:

- (a) in the case of an application for a Part 5 search warrant (other than a covert search warrant or a criminal organisation search warrant)—Part 2 of Form 1,
- (b) in the case of an application for a covert search warrant—Part 2 of Form 2,
- (c) in the case of an application for a criminal organisation search warrant—Part 2 of Form 3,
- (d) in the case of an application for a search warrant other than a Part 5 search warrant—Part 2 of Form 4,
- (e) in the case of an application for a warrant issued under section 83 (Entry by warrant where entry denied) of the Act—Part 2 of Form 5,
- (f) in the case of an application for a crime scene warrant issued under Part 7 of the Act—Part 2 of Form 6,
- (g) in the case of an application for a warrant issued under Division 2 (Use of drug detection dogs) of Part 11 of the Act—Part 2 of Form 7,
- (h) in the case of an application for a notice to produce documents issued under Division 3 of Part 5 of the Act—Part 2 of Form 8,
- (i) in the case of an application for a warrant issued under section 103 (Warrant for arrest of person unlawfully at large) of the Act—Part 2 of Form 9,
- (j) in the case of an application for a detention warrant issued under Part 9 of the Act—Part 2 of Form 10.

6 Form of warrant or notice to produce

- (1) For the purposes of section 66 of the Act:
 - (a) Form 11 is the form for a Part 5 search warrant (other than a covert search warrant or a criminal organisation search warrant), and
 - (b) Form 12 is the form for a covert search warrant, and
 - (c) Form 13 is the form for a criminal organisation search warrant, and
 - (d) Form 14 is the form for a search warrant other than a Part 5 search warrant, and
 - (e) Form 15 is the form for a warrant issued under section 83 (Entry by warrant where entry denied) of the Act, and
 - (f) Form 16 is the form for a crime scene warrant issued under Part 7 of the Act, and
 - (g) Form 17 is the form for a detention warrant issued under Part 9 of the Act, and
 - (h) Form 18 is the form for a warrant issued under Division 2 (Use of drug detection dogs) of Part 11 of the Act, and
 - (i) Form 19 is the form for a notice to produce documents issued under Division 3 of Part 5 of the Act.
- (2) A warrant under section 103 (Warrant for arrest of person unlawfully at large) of the Act is to be issued in the form of Form 20.

7 Form of occupier's notice: section 67 (2) (a)

For the purposes of section 67 (2) (a) of the Act:

- (a) Form 21 is the form for an occupier's notice in relation to a Part 5 search warrant (other than a covert search warrant or a criminal organisation search warrant), and
- (b) Form 22 is the form for an occupier's notice in relation to a covert search warrant, and
- (c) Form 24 is the form for an occupier's notice in relation to a criminal organisation search warrant, and
- (d) Form 25 is the form for an occupier's notice in relation to a search warrant other than a Part 5 search warrant, and
- (e) Form 26 is the form for an occupier's notice in relation to a crime scene warrant issued under Part 7 of the Act.

Note. An occupier's notice is not required to be issued in connection with a search warrant issued under section 86 (Police may enter and search for firearms) of the Act.

8 Form of adjoining occupier's notice: section 67B

An adjoining occupier's notice under section 67B of the Act may be in or to the effect of Form 23.

9 Receipts for things seized

- (1) A person who seizes a thing while executing a search warrant other than a covert search warrant, or a crime scene warrant issued under Part 7 of the Act, in any premises must provide the occupier of the premises with a receipt acknowledging seizure of the thing if the occupier is then present and it is reasonably practicable to do so.
- (2) A person who seizes a dangerous article under section 85 or 87 of the Act while executing a warrant issued under section 83 of the Act in any premises must provide the occupier of the premises with a receipt acknowledging seizure of the thing if the occupier is then present and it is reasonably practicable to do so.

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Part 2 Warrants and notices to produce documents

- (3) A copy of a receipt issued under this clause, in relation to a thing seized while executing a warrant, is to be attached to the report about the execution of the warrant that is referred to in clause 10 (1).

10 Form of report to eligible issuing officer on execution of warrant (other than covert search warrant) or giving of notice to produce: section 74

- (1) A report to an eligible issuing officer under section 74 of the Act about the execution of a warrant (other than a covert search warrant) must be in or to the effect of Form 27 and must contain the particulars required to complete that Form.
- (2) A report to an eligible issuing officer under section 74 of the Act about the giving of a notice to produce must be in or to the effect of Form 30 and must contain the particulars required to complete that Form.

11 Form of report to eligible issuing officer on execution of covert search warrant: section 74A

- (1) A report to an eligible issuing officer under section 74A of the Act about the execution of a covert search warrant must be in or to the effect of Form 28 and must contain the particulars required to complete that Form.
- (2) A report to an eligible issuing officer under section 74A of the Act about the return or retrieval of a thing under section 49A of the Act must be in or to the effect of Form 29 and must contain the particulars required to complete that Form.

12 Keeping and inspection of records

- (1) The following documents must be kept in relation to each warrant to which this subclause applies that is issued:
 - (a) any written application for the warrant,
 - (b) any record relating to the warrant made by or on behalf of an authorised officer or eligible issuing officer (as the case requires),
 - (c) a copy of any occupier's notice,
 - (d) a copy of any adjoining occupier's notice,
 - (e) any report on the execution of the warrant (including a copy of any receipt provided to the occupier under clause 9).
- (2) Subclause (1) applies to the following warrants:
 - (a) a search warrant (including a covert search warrant),
 - (b) a warrant under section 83 (Entry by warrant where entry denied) of the Act,
 - (c) a crime scene warrant under Part 7 of the Act,
 - (d) a warrant under section 103 (Warrant for arrest of person unlawfully at large) of the Act,
 - (e) a detention warrant under Part 9 of the Act,
 - (f) a warrant under Division 2 (Use of drug detection dogs) of Part 11 of the Act.
- (3) The following documents must be kept in relation to each notice to produce documents issued under Division 3 of Part 5 of the Act:
 - (a) any application for the notice,
 - (b) any record relating to the notice made by or on behalf of the authorised officer or eligible issuing officer (as the case requires),
 - (c) any report on the execution of the notice,
 - (d) any record of an application made for an order to access documents under section 56 of the Act,

- (e) any order made under section 56 of the Act.
- (4) The documents must be kept for at least 6 years from the date on which the warrant or notice was issued:
 - (a) at the Local Court registry or the Supreme Court registry (as the case may be) specified in the occupier's notice, or
 - (b) if no occupier's notice is issued, at the Local Court registry or the Supreme Court registry (as the case may be) at which the warrant or notice was issued or that is nearest to the place at which it was issued.
- (5) The documents may be destroyed after the period referred to in subclause (4) has expired.
- (6) During the hours that the Supreme Court registry is open to the public, the documents referred to in subclause (1) relating to a covert search warrant may be inspected by the occupier of the premises to which the covert search warrant relates or by any other person who is given an occupier's notice relating to the warrant under the Act.
- (7) During the hours that the Local Court registry or the Supreme Court registry (as the case may be) is open to the public, the documents, other than those referred to in subclause (6), may be inspected:
 - (a) in the case of any warrant other than a warrant referred to in paragraph (b) or (c)—by the occupier of the premises to which the warrant relates or by any other person on behalf of the occupier, or
 - (b) in the case of a detention warrant issued under Part 9 of the Act—by the detained person to whom the warrant relates or by any other person on behalf of that person, or
 - (c) in the case of a warrant issued under Division 2 (Use of drug detection dogs) of Part 11 of the Act—by any member of the public, or
 - (d) in the case of a notice to produce documents issued under Division 3 of Part 5 of the Act—by a person who is an officer, or other person, acting on behalf of the authorised deposit-taking institution to which the notice to produce relates.

13 Certified records not available for inspection

- (1) An eligible issuing officer may at any time issue a certificate to the effect that the officer is satisfied that:
 - (a) a document or part of a document referred to in clause 12 contains matter:
 - (i) that could disclose a person's identity, and
 - (ii) that, if disclosed, is likely to jeopardise that or any other person's safety, or
 - (b) a document or part of a document referred to in clause 12 contains matter that, if disclosed, may seriously compromise the investigation of any matter.
- (2) The document or part of the document to which the certificate relates is not to be made available for inspection under clause 12 (6) or (7).
- (3) The certificate is to be kept with the document to which it relates.
- (4) An eligible issuing officer (whether or not the one that issued the certificate) may revoke the certificate if satisfied (after consideration of submissions from any interested party) that disclosure of the matter to which it relates is no longer likely to jeopardise any person's safety or seriously compromise the investigation of any matter.

Part 3 Investigations and questioning

Division 1 Custody managers

14 Designation of police stations and other places to be used for detaining persons

- (1) The Commissioner of Police is to designate police stations, and other places in the State, for the purpose of detaining persons under Part 9 of the Act.
- (2) A police station or other place is not to be designated unless it appears to the Commissioner to provide, or have access to, sufficient facilities for that purpose.
- (3) Police stations and other places of detention designated under this clause are referred to in this Division as *designated police stations* and *designated places of detention*, respectively.

Note. Section 31 of the *Police Act 1990* enables the Commissioner of Police to delegate any function conferred on the Commissioner, including the functions set out in this and the next clause.

15 Appointment of custody managers for designated police stations and designated places of detention

The Commissioner of Police is to appoint one or more police officers (*appointed custody managers*) to act as custody managers at each designated police station and each designated place of detention.

16 Order of preference in relation to places of detention

- (1) A police station or place of detention to which a person is taken to be detained under Part 9 of the Act must be a designated police station, or designated place of detention, at which there is an appointed custody manager who is available to act as the custody manager for the person.
- (2) If it is not reasonably practicable to comply with subclause (1), the person may be detained at a designated police station, or designated place of detention, at which there is a police officer who (while not an appointed custody manager) is available to act as the custody manager for the person.
- (3) If it is not reasonably practicable to comply with subclause (1) or (2), the person may be detained at any police station or place of detention at which there is a police officer who is available to act as the custody manager for the person.
- (4) If it is not reasonably practicable to comply with subclause (1), (2) or (3), the person may be detained at any place of detention.
- (5) This clause does not apply if the person is detained by a police officer in the officer's capacity as a member of the staff of the New South Wales Crime Commission or a member of the staff of the Australian Crime Commission, as referred to in clause 18.

17 Order of preference in relation to custody managers

- (1) Except as provided by subclause (2), if a person is detained under Part 9 of the Act at a designated police station or designated place of detention, only an appointed custody manager may act as the custody manager for the person.
- (2) If an appointed custody manager is not available to act as the custody manager for the person under subclause (1) or the person is taken to a police station that is not a

designated police station, the following police officers may act as the custody manager for the person:

- (a) any police officer of or above the rank of Sergeant (or the officer for the time being in charge of the police station or designated place of detention (as the case may be)),
 - (b) if no such police officer is available to act as the custody manager for the person—any other police officer.
- (3) The arresting or investigating officer for the person is not to act as the custody manager for the person under subclause (2) unless:
- (a) no other police officer is available to act as the custody manager for the person, and
 - (b) a police officer holding the position of duty officer at a designated police station has given written permission to the arresting or investigating officer to act as the custody manager for the person.
- (4) Written permission for the purposes of subclause (3) may be obtained by facsimile.
- (5) This clause does not apply if the person is detained by a police officer in the officer's capacity as a member of the staff of the New South Wales Crime Commission or a member of the staff of the Australian Crime Commission, as referred to in clause 18.

18 Custody managers for New South Wales Crime Commission or Australian Crime Commission investigations

- (1) A police officer who is a member of the staff of the Commission or a member of the staff of the ACC may act as the custody manager for a detained person who is the subject of an investigation conducted by the Commission or the ACC respectively.
- (2) The arresting or investigating officer for the person is not to act as the custody manager for the person unless:
 - (a) no other police officer who is a member of the staff of the Commission or a member of the staff of the ACC is available to act as the custody manager for the person, and
 - (b) written permission has been obtained in accordance with subclause (3).
- (3) For the purposes of subclause (2), the written permission must be obtained from:
 - (a) in the case of Commission investigations—a person holding the position of Commissioner, Director, or Assistant Director, Investigations, of the Commission, or
 - (b) in the case of ACC investigations—a person holding the position of General Manager, National Operations, of the ACC.
- (4) Written permission for the purposes of subclause (2) may be obtained by facsimile.
- (5) In this clause:

ACC means the Australian Crime Commission established under the *Australian Crime Commission Act 2002* of the Commonwealth.

a member of the staff of the ACC has the same meaning as in the *Australian Crime Commission Act 2002* of the Commonwealth.

a member of the staff of the Commission has the same meaning as in section 74 of the *Crime Commission Act 2012*.

Commission means the New South Wales Crime Commission established under the *Crime Commission Act 2012*.

19 Form of summary of Part 9 of Act

For the purposes of section 122 (1) (b) of the Act:

- (a) Form 31 is the form of the summary of Part 9 of the Act in the case of a detained person, and
- (b) Form 32 is the form of the summary of Part 9 of the Act in the case of a protected suspect.

20 Custody managers not prevented from exercising other functions

The provisions of this Division are not to be construed so as to prevent a police officer who is acting as the custody manager for a detained person or protected suspect from also exercising:

- (a) any function in connection with the identification of the person, or
- (b) any function under the provisions of Schedule 3 to the *Road Transport Act 2013* in relation to the person (such as carrying out a breath analysis of the person).

21 Guidelines for custody managers and other police officers

Custody managers and all other police officers must have regard to the guidelines set out in Schedule 2 in the exercise of their functions under Part 9 of the Act and this Part.

Division 2 Custody records

22 Meaning of “custody record”

In this Division:

custody record means the record required to be kept under section 131 of the Act.

23 Separate record for each detained person

- (1) A separate custody record must be opened, as soon as practicable, for each person who is detained under Part 9 of the Act.
- (2) A custody record may be in writing or in electronic form.
- (3) All entries in a custody record must include the time at which the entry is made.
- (4) The time of an event to which an entry in the custody record relates must also be included if the entry is not made within a reasonable time of the occurrence of the event.

24 Additional matters to be recorded in custody record

- (1) In addition to the matters specified in section 131 of the Act, the custody manager must record the following particulars in the custody record for a detained person:
 - (a) in the case of a person who has been arrested during the previous 48 hours:
 - (i) the offence or offences for which the person was arrested during that previous 48 hours, and
 - (ii) the investigation period that remains after reduction by so much of an earlier investigation period or periods as occurred within that previous 48 hours,
 - (b) if an application is made for a detention warrant, and the person declines to make representations (either personally, or by his or her legal representative) to the authorised officer, the fact that the person so declined,

- (c) if a detention warrant is issued, a copy of the warrant or form of detention warrant, as the case may be,
 - (d) the time of any request to make a communication, and the time of any communication, under section 123 or 124 of the Act,
 - (e) the time of any request for information, or provision of information, pursuant to section 126 or 127 of the Act, together with the nature of such information,
 - (f) any request by the person, and any arrangement by a police officer (including under section 128 of the Act) for an interpreter, and the time that any such request or arrangement is made,
 - (g) any request by the person, and any arrangement by a police officer (including under section 129 of the Act) for medical treatment or medication, and the time at which the request or arrangement is made,
 - (h) any request by the person for refreshments, toilet facilities, washing, showering or bathing facilities,
 - (i) if the person's clothing or personal effects are withheld, the reasons for withholding those items.
- (2) The custody manager must request the person to sign an acknowledgment as to the correctness of any entry made in the custody record in relation to the matters referred to in section 131 (2) (d) of the Act and subclause (1) (b).

25 Inspection of custody record

- (1) A detained person must be permitted to inspect the custody record for the person on request unless the request is unreasonable or cannot reasonably be complied with.
- (2) While the detained person is in police custody, a legal representative of the detained person, a support person for the detained person and a consular official must each be permitted to inspect the custody record for the detained person as soon as practicable after the legal representative, support person or consular official arrives at the place of detention.
- (3) After the detained person has been released from police custody, the legal representative, support person and consular official must each be permitted to inspect the custody record if they give reasonable notice of their request to do so.
- (4) Despite subclauses (2) and (3), a support person or consular official may inspect the custody record only with the authorisation of the detained person.

Division 3 Vulnerable persons

26 Interpretation

- (1) In this Division:
 - child* means a person who is under the age of 18 years.
 - impaired intellectual functioning*, in relation to a person, means:
 - (a) a total or partial loss of the person's mental functions, or
 - (b) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction, or
 - (c) a disorder, illness or disease that affects the person's thought processes, perceptions of reality, emotions or judgement, or that results in disturbed behaviour.

Note. See clause 3 of Schedule 2 for guidance to custody managers on whether paragraph (a) or (b) applies to a person.

impaired physical functioning, in relation to a person, means:

- (a) a total or partial loss of the person's bodily functions or of part of a person's body, or
 - (b) a presence in the person's body of organisms causing or capable of causing disease or illness, or
 - (c) a malfunction, malformation or disfigurement of part of the person's body.
- (2) For the purposes of this Division, a detained person who has impaired physical functioning is taken not to have impaired physical functioning if the custody manager for the person reasonably believes that the person's impairment is so minor that the person will not be significantly disadvantaged with respect to the person's participation in any investigative procedure (in comparison with members of the community generally).

27 Vulnerable persons

- (1) A reference in this Division to a vulnerable person is a reference to a person who falls within one or more of the following categories:
- (a) children,
 - (b) persons who have impaired intellectual functioning,
 - (c) persons who have impaired physical functioning,
 - (d) persons who are Aboriginal persons or Torres Strait Islanders,
 - (e) persons who are of non-English speaking background,
- but does not include a person whom the custody manager reasonably believes is not a person falling within any of those categories.
- Note.** If a person falls within more than one of the above categories, each provision of this Division relating to any category within which the person falls applies in relation to the person.
- (2) Pursuant to section 112 (1) of the Act, the application of Part 9 of the Act to vulnerable persons is modified by this Division.

28 Custody manager to assist vulnerable person

The custody manager for a detained person who is a vulnerable person must, as far as practicable, assist the person in exercising the person's rights under Part 9 of the Act, including any right to make a telephone call to a legal practitioner, support person or other person.

29 Support person

A person may be a support person for a detained person or protected suspect who is a vulnerable person for the purposes of this Division only if the first-mentioned person is aged 18 years or over and is:

- (a) in the case of a detained person or protected suspect who is a child:
 - (i) a parent or guardian, or a person who has the lawful custody of the child, but not a parent of the child if the parent has neither guardianship nor custody of the child, or
 - (ii) a person who is responsible for the care of the child, or
 - (iii) an adult (other than a police officer) who has the consent of a person referred to in subparagraph (i) or (ii) to be the support person for the child, or
 - (iv) if the child is aged 14 years or over—an adult (other than a police officer) who has the consent of the child to be the support person for the child, or

- (v) a legal practitioner of the child's own choosing, or
- (b) in the case of a detained person or protected suspect who is not a child:
 - (i) a guardian or any other person who is responsible for the care of the detained person or protected suspect, or
 - (ii) a relative, friend or any other person (other than a police officer) who has the consent of the detained person or protected suspect to be the support person for the detained person or protected suspect, or
 - (iii) if none of the persons mentioned in subparagraph (i) or (ii) are applicable or readily available—a person (other than a police officer) who has expertise in dealing with vulnerable persons of the category, or a category, to which the detained person or protected suspect belongs.

30 Support person may be present during investigative procedure

- (1) A detained person or protected suspect who is a vulnerable person is entitled to have a support person present during any investigative procedure in which the detained person or protected suspect is to participate.
- (2) However, a detained person or protected suspect who is a vulnerable person solely as a result of being a person of non-English speaking background is entitled to have a support person present only if an interpreter is not required to be arranged under section 128 (1) of the Act solely because of section 128 (3) (a) of the Act.
- (3) Before any such investigative procedure starts, the custody manager for the detained person or protected suspect must inform the person that the person is entitled to the presence of a support person during the investigative procedure.
- (4) If the detained person or protected suspect wishes to have a support person present, the custody manager must, as soon as practicable:
 - (a) give the detained person or protected suspect reasonable facilities to enable the person to arrange for a support person to be present, and
 - (b) allow the detained person or protected suspect to do so in circumstances in which, so far as practicable, the communication will not be overheard.
- (5) The custody manager must defer for a reasonable period any such investigative procedure until a support person is present unless the detained person or protected suspect has expressly waived his or her right to have a support person present.
- (6) An investigative procedure is not required to be deferred under subclause (5) for more than 2 hours to allow a support person to arrive at the place of detention.
- (7) A custody manager is not required to comply with subclauses (3)–(5) if the custody manager believes on reasonable grounds that:
 - (a) doing so is likely to result in an accomplice of the detained person or protected suspect avoiding arrest, or
 - (b) doing so is likely to result in the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness, or
 - (c) doing so is likely to result in hindering the recovery of any person or property concerned in the offence under investigation, or
 - (d) doing so is likely to result in bodily injury being caused to any other person, or
 - (e) the safety of other persons requires that the investigative procedure be carried out as a matter of urgency.

31 Relationship between entitlement to support persons and entitlement to consult

- (1) A detained person or protected suspect who is a vulnerable person is entitled to a support person under clause 30 or to consult with a friend, relative, guardian or independent person under section 123 (4) of the Act, but not both.
- (2) However, a friend, relative, guardian or independent person of the detained person or protected suspect who, under section 123 (1) (a) (ii) of the Act, attends the place of detention is not prevented by this clause from acting as a support person if the detained person or protected suspect requests it.

32 Child cannot waive entitlement to support person

A detained person or protected suspect who is a child cannot waive the child's entitlement under this Division to have a support person present during an investigative procedure.

33 Role of support persons during interview

- (1) The custody manager for a detained person or protected suspect who is a vulnerable person is to inform any support person for the detained person or protected suspect that the support person is not restricted to acting merely as an observer during an interview of the detained person or protected suspect and may, among other things:
 - (a) assist and support the detained person or protected suspect, and
 - (b) observe whether or not the interview is being conducted properly and fairly, and
 - (c) identify communication problems with the detained person or protected suspect.
- (2) The custody manager is to give a copy of the summary referred to in section 122 (1) (b) of the Act, to:
 - (a) the support person, and
 - (b) any interpreter for the detained person or protected suspect who attends in person at the place of detention.
- (3) If the support person or the detained person's or protected suspect's legal representative is present during an interview of the detained person or protected suspect, the support person or legal representative is to be given an opportunity to read and sign any written interview record.
- (4) Any refusal by the support person or legal practitioner to sign a written interview record when given the opportunity to do so must itself be recorded.

34 Exclusion of support person from investigative procedure

- (1) A support person may be excluded from an investigative procedure if the support person unreasonably interferes with the procedure.
- (2) If the support person is excluded under subclause (1), the detained person or protected suspect concerned is entitled to have another support person present during the investigative procedure.

35 Person responsible for welfare of certain detained persons or protected suspects to be contacted

- (1) If a detained person or protected suspect is a child or a person with impaired intellectual or physical functioning, the custody manager for the person must, as soon as practicable, attempt:
 - (a) to ascertain the identity of the person responsible for the welfare of the detained person or protected suspect, and
 - (b) to contact the person so responsible and advise the person of the detained person's or protected suspect's whereabouts and the grounds for the detention.
- (2) If a detained person or protected suspect has impaired physical functioning, the custody manager must, as soon as practicable, attempt to determine any specific physical care needs of the person and, if reasonably practicable to do so, arrange for those needs to be provided for.

36 Legal assistance for Aboriginal persons or Torres Strait Islanders

If a detained person or protected suspect is an Aboriginal person or Torres Strait Islander, then, unless the custody manager for the person is aware that the person has arranged for a legal practitioner to be present during questioning of the person, the custody manager must:

- (a) immediately inform the person that a representative of the Aboriginal Legal Service (NSW/ACT) Limited will be notified:
 - (i) that the person is being detained in respect of an offence, and
 - (ii) of the place at which the person is being detained, and
- (b) notify such a representative accordingly.

37 Cautions

- (1) If a detained person or protected suspect who is a vulnerable person is given a caution, the custody manager or other person giving the caution must take appropriate steps to ensure that the detained person or protected suspect understands the caution.
- (2) If the detained person or protected suspect is given a caution in the absence of a support person, the caution must be given again in the presence of a support person, if one attends during the person's detention.
- (3) A reference in this clause to the giving of a caution is a reference to the giving of a caution that the person does not have to say or do anything but that anything the person does say or do may be used in evidence.

38 Times to be disregarded in calculating investigation period

- (1) In addition to any time referred to in section 117 of the Act, the following times are to be disregarded in determining how much of an investigation period has elapsed if the detained person concerned is a vulnerable person:
 - (a) any time that is required to allow for the person (or someone else on the person's behalf) to arrange for a support person to attend at the place of detention,
 - (b) any time that is required to allow the support person to arrive at the place of detention.
- (2) However, those times are to be disregarded only to the extent that they are times during which the investigative procedure concerned is reasonably suspended or deferred.

39 Additional information to be included in detention warrant application

If an application for a detention warrant is made in respect of a vulnerable person, the application for the warrant must include:

- (a) reference to the fact that the person is believed to be a vulnerable person, and
- (b) the nature of the person's vulnerability, and
- (c) the identity and relationship to the person of any support person who is present during the investigative procedure concerned, and
- (d) any particular precautions that have been taken in respect of the vulnerable person.

Part 4 Public disorder emergency powers—seizure, detention and return of vehicles

40 Definitions

In this Part:

drive a vehicle and *driver* of a vehicle have the same meanings as in the *Road Transport Act 2013*.

public disorder has the same meaning as in section 87A of the Act.

responsible person for a vehicle has the same meaning as in the *Road Transport Act 2013*.

seized vehicle means a vehicle that has been seized by a police officer under section 87M (1) (a) of the Act.

41 Powers in relation to removal and detention of seized vehicles

- (1) A police officer may cause any locking device or other feature of a seized vehicle to be removed, dismantled or neutralised and may, if the driver or any other person will not surrender the keys to the vehicle, start the vehicle by other means.
- (2) A seized vehicle may:
 - (a) be detained at the place where it is seized, or
 - (b) be moved to, and detained, at any other place determined by the Commissioner.
- (3) A seized vehicle that is removed under subclause (2) (b):
 - (a) may be moved by its being driven, whether or not under power, or by its being towed or pushed, or in any other manner whatever, and
 - (b) may be moved by one or more police officers or, at the direction of a police officer, by persons engaged by the Commissioner, and may be detained at premises under the control of the Commissioner or of another authority or person.

42 Towing fee for seized vehicles

- (1) If a seized vehicle is towed under clause 41, a fee is payable to the Commissioner by the responsible person for the vehicle, except as otherwise provided by this clause.
- (2) The fee payable is whichever is the lesser of the following:
 - (a) the actual cost of towing the vehicle,
 - (b) the maximum charge for the time being determined under section 54 of the *Tow Truck Industry Act 1998* (including any surcharge chargeable, in the circumstances of the case, in accordance with a determination under that section) for:
 - (i) in the case of the Sydney metropolitan area—a 50-kilometre tow, or
 - (ii) in any other case—a 100-kilometre tow.
- (3) A fee is not payable under this clause by the responsible person for the seized vehicle if the person furnishes the Commissioner of Police with a statutory declaration stating:
 - (a) that the responsible person did not know, and could not reasonably be expected to have known, that the vehicle would be used to convey any person to participate in a public disorder, and

- (b) that:
 - (i) at the time the vehicle was stopped under section 87J of the Act it was being driven by a person whose name and address are supplied in the declaration, or
 - (ii) the responsible person does not know and could not with reasonable diligence have ascertained the name and address of the person who was driving the vehicle at that time.
- (4) A fee that, by virtue of subclause (3), is not payable by the responsible person for the vehicle is payable by the person driving the vehicle at the time it was stopped under section 87J of the Act.
- (5) The whole or any part of a towing fee that is unpaid may be recovered from the person required to pay it by the Commissioner as a debt due to the State in any court of competent jurisdiction.
- (6) A statutory declaration referred to in subclause (3) that is produced in any proceedings for recovery of a fee under this clause that alleges that any person was the driver of the vehicle at the time of the offence is evidence of the driver's identity (unless evidence to the contrary is adduced).

43 Storage fees and release of seized vehicles

- (1) If a seized vehicle is detained under section 87M of the Act at a place other than where it is seized, a fee for the storage of the vehicle at that place is payable to the Commissioner. The fee is \$16 for each day (or part of a day) that the vehicle is so detained.
- (2) A seized vehicle that is detained under section 87M of the Act may be released into a person's custody only if:
 - (a) the Commissioner is satisfied, on such evidence as the Commissioner may reasonably require, that the applicant is lawfully entitled to possession of the vehicle, and
 - (b) the fee under subclause (1) for the storage of the vehicle has been paid (except to the extent that the Commissioner has waived payment of that fee).
- (3) A person to whom a vehicle is released under this clause must in writing acknowledge receipt of the vehicle from the custody of the Commissioner.
- (4) The Commissioner may waive or remit the whole or any part of the fee payable under this clause for the storage of a seized vehicle.
- (5) If a seized vehicle is not claimed by any person after the expiration of the period for which the vehicle may be detained under section 87M of the Act, the vehicle may be dealt with in accordance with Division 2 of Part 17 of the Act.

44 Safe keeping of seized vehicles

The Commissioner has (in the Commissioner's official capacity) a duty to take all reasonable steps to secure a seized vehicle against theft or damage while it is being detained under section 87M of the Act.

45 Directions by court as to fees payable under this Part

- (1) A court may, in any proceedings (including proceedings before the Local Court under section 87M (2) of the Act), direct that any fee payable under this Part in relation to the towing or storage of a seized vehicle be reduced by such amount as the court may specify or that, in the circumstances of the case, no such fee is required to be paid.

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Part 4 Public disorder emergency powers—seizure, detention and return of vehicles

- (2) Any such direction by a court:
 - (a) may be given for reasons of avoidance of any undue hardship to any person or other injustice perceived by the court, and
 - (b) has effect according to its tenor.

Part 5 Miscellaneous

46 Persons of the same sex (other than police officers) who may conduct personal searches

For the purposes of section 32 (7A) (b) of the Act, the following classes of persons are prescribed:

- (a) corrective services officers (within the meaning of the *Crimes (High Risk Offenders) Act 2006*),
- (b) ambulance officers (within the meaning of the *Mental Health Act 2007*),
- (c) nurses,
- (d) if it is not reasonably practicable for a person of a class referred to in paragraphs (a)–(c) to be available for the purposes of the search concerned—persons who, in the opinion of the Commissioner, have appropriate training, qualifications or experience in conducting personal searches.

47 Exercise of powers at crime scenes—prescribed rural areas

For the purposes of section 92 (3) of the Act, the following Local Area Commands are prescribed as rural areas:

- (a) Albury LAC,
- (b) Barrier LAC,
- (c) Barwon LAC,
- (d) Canobolas LAC,
- (e) Castlereagh LAC,
- (f) Chifley LAC,
- (g) Cootamundra LAC,
- (h) Darling River LAC,
- (i) Deniliquin LAC,
- (j) Far South Coast LAC,
- (k) Griffith LAC,
- (l) Lachlan LAC,
- (m) Mudgee LAC,
- (n) Monaro LAC,
- (o) Orana LAC,
- (p) Oxley LAC,
- (q) New England LAC,
- (r) Wagga Wagga LAC.

48 Use of drug detection dogs in authorised places—prescribed train routes

(1) For the purposes of section 148 (1) (c) of the Act, the following public passenger vehicle routes are prescribed:

- (a) the Bankstown route, being the train line that is:
 - (i) between Liverpool station and Sydney Central station, and
 - (ii) via Bankstown station,
- (b) the Inner West route, being the train line that is:
 - (i) between Liverpool station and Sydney Central station, and

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Part 5 Miscellaneous

- (ii) via Regents Park station,
 - (c) the Eastern Suburbs route, being the train line that is between Bondi Junction station and Sydney Central station,
 - (d) the Illawarra route, being the train line that is between Bomaderry station and Sydney Central station, and including the train line between Sutherland station and Cronulla station via Kirrawee station, and including the train line between Wollongong station and Port Kembla station,
 - (e) the Northern route, being the train line that is:
 - (i) between Newcastle station and Sydney Central station, and
 - (ii) via Strathfield station,and including the train line between Chatswood station and Epping station,
 - (f) the South route, being the train line that is:
 - (i) between Campbelltown station and Sydney Central station, and
 - (ii) via Circular Quay station, and
 - (iii) via Granville station,
 - (g) the Western route, being the train line that is:
 - (i) between Penrith station and Sydney Central station, and
 - (ii) via Strathfield station,and including the train line between Blacktown station and Richmond station and the Olympic Park loop,
 - (h) the North Shore route, being the train line that is:
 - (i) between Berowra station and Sydney Central station, and
 - (ii) via Chatswood station,
 - (i) the Southern Highlands route, being the train line that is between Campbelltown station and Goulburn station,
 - (j) the Blue Mountains route, being the train line that is between Lithgow station and Sydney Central station,
 - (k) the Hunter route, being the train line that is between Newcastle station and Dungog station, and including the train line between Maitland station and Scone station,
 - (l) the Airport and East Hills route, being the train line that is:
 - (i) between Sydney Central station and Macarthur station, and
 - (ii) via Wollli Creek station or via Sydenham station,
 - (m) the Carlingford route, being the train line that is between Clyde station and Carlingford station,
 - (n) the Cumberland route, being the train line that is between Campbelltown station and Schofields station.
- (2) A route prescribed by this clause includes a train travelling on any part of the train line described in respect of the route, irrespective of whether:
- (a) the train stops at a station on the train line, or
 - (b) the train has travelled or will travel on any other train line.
- (3) A route prescribed by this clause includes the route of any bus being used to convey persons between train stations on the prescribed route because trains are not running between those stations, and any stopping place of such a bus.

49 Use of drug detection dogs in authorised places—prescribed bus routes

For the purposes of section 148 (1) (c) of the Act, the following public passenger vehicle routes are prescribed:

- (a) the Albury route, being the bus route that is:
 - (i) between Albury and Sydney, and
 - (ii) via Goulburn and the Hume Highway,
- (b) the Grafton route, being the bus route that is:
 - (i) between Grafton and Sydney, and
 - (ii) via Kempsey and the Pacific Highway.

50 Code of practice for directions under Part 14 of Act

The code of practice set out in Schedule 3 is prescribed for the purposes of section 200A (1) of the Act.

51 Records relating to detention of intoxicated persons

- (1) For the purposes of section 209 of the Act, the following particulars must be contained in a record made by a police officer referred to in section 209 (1) (a) of the Act in relation to the detention of an intoxicated person:
 - (a) the name and rank of the police officer,
 - (b) the name and date of birth of the intoxicated person (if they can be ascertained after making reasonable inquiries),
 - (c) the grounds on which the intoxicated person is detained,
 - (d) the date and time when the following occur:
 - (i) the intoxicated person's detention commences,
 - (ii) the intoxicated person is brought to the authorised place of detention,
 - (e) the name and address of the authorised place of detention.
- (2) For the purposes of section 209 of the Act, the following particulars must be contained in a record made by a person referred to in section 209 (1) (b) of the Act (*the responsible detention officer*) in relation to the detention of an intoxicated person at an authorised place of detention:
 - (a) the name and rank of the responsible detention officer,
 - (b) the name and rank of the police officer who brings the intoxicated person to the authorised place of detention,
 - (c) the name and date of birth of the intoxicated person (if they can be ascertained after making reasonable inquiries),
 - (d) the date and time when the following occur:
 - (i) the intoxicated person is brought to the authorised place of detention,
 - (ii) the intoxicated person is released from detention,
 - (e) the name of each detention officer at the authorised place of detention who is responsible for the intoxicated person's detention,
 - (f) details of any arrangement by a detention officer at the authorised place of detention for medical treatment or medication to be administered to the intoxicated person and the time at which the arrangement is made.

- (3) For the purposes of section 209 of the Act, a record made in relation to the search of an intoxicated person by a person referred to in section 209 (1) (c) of the Act must contain the following particulars:
 - (a) the name and rank of the person who carries out the search (*the searching detention officer*),
 - (b) the name and date of birth of the intoxicated person (if they can be ascertained after making reasonable inquiries),
 - (c) a description of any personal belongings of the intoxicated person of which the searching detention officer has taken possession as a result of a search of the intoxicated person.
- (4) Nothing in this clause requires a detention officer to make a record, in relation to the detention of an intoxicated person, containing any particular that is contained in a record made in relation to the same detention of the intoxicated person by a detention officer of the same kind.
- (5) In this clause:
detention officer has the same meaning as it has in Part 16 of the Act.

52 Failure to comply with direction—penalty notice offence and penalty

For the purposes of section 235 of the Act, the offence created by section 199 (1) of the Act:

- (a) is an offence for which a penalty notice may be served, and
- (b) the penalty prescribed for the offence is \$220.

53 Savings

- (1) Any act, matter or thing that, immediately before the repeal of the *Law Enforcement (Powers and Responsibilities) Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.
- (2) A reference in this Regulation to a Form includes a reference to the corresponding Form in the *Law Enforcement (Powers and Responsibilities) Regulation 2005*.

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

Schedule 1 Forms

(Clause 3 (2))

Form 1 Application for Part 5 search warrant (other than covert or criminal organisation search warrant)/record of application

(Clauses 4 (1) (a) and 5 (a))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Note. This Form is to be used for search warrants (other than covert or criminal organisation search warrants) in relation to indictable, firearms, prohibited weapons, narcotics, child pornography or child prostitution offences or stolen goods. Form 2 should be used for covert search warrants and Form 4 should be used for search warrants (other than Part 5 search warrants).

Part 1 Application

On [Date], I, [Name and rank] of [Place of work], apply for a search warrant to enter and search the premises known as [Address] in the State of New South Wales, being a [Description of premises (eg dwelling house)].

I swear/solemnly, sincerely and truly declare and affirm* that:

- 1 I have reasonable grounds for believing that:
 - (a)* there is, or within 72 hours will be, in or on the premises, the following things: [List items to be searched for. If exact location of items is known, include that information.]
 - (b)* the things are connected with the following searchable offence(s) within the meaning of section 46A (1) (a) of the Law Enforcement (Powers and Responsibilities) Act 2002: [Insert description of offence(s).]
 - (c)* a child prostitution offence, within the meaning of section 47 of the Law Enforcement (Powers and Responsibilities) Act 2002 has recently been committed, is being committed or, within 72 hours will be committed, on or with respect to the premises.
- 2 I rely on the following grounds in support of this application: [Insert the reasonable grounds on which the application for the search warrant is based. If space is insufficient, continue overleaf or attach a separate sheet.]

[3 and 4 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of the previous application to this Form.]

3* The following are details of the refusal of a previous application:

4* [Need not be completed if the previous application was made to an eligible issuing officer who was not a Magistrate and this application is made to a Magistrate.]

The additional information that I consider justifies the making of this further application is:

5* I seek that a certificate pursuant to clause 13 of the Law Enforcement (Powers and Responsibilities) Regulation 2016 be issued, on the following grounds: [Specify grounds]

Sworn/declared and affirmed* before me on [Date] at [Place] in the State of New South Wales.

Applicant [Print name and insert signature.]

Justice of the Peace [Print name and insert signature.]

[This application may be sworn before the eligible issuing officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.]

[* Delete if inapplicable.]

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the eligible issuing officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Eligible issuing officer's record of application for a search warrant

On [Date] at [Time], I, the undersigned eligible issuing officer, received this application for a search warrant.

- 1* [To be completed if the application was not made in person.]
The application was made by [Specify how the application was made (eg facsimile, telephone)] and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.
- 2* [To be completed if the eligible issuing officer required the applicant to provide further information concerning the grounds on which the warrant was sought.]
*Further information provided by the applicant, as required by me, is attached.
*Particulars of further information orally provided by the applicant, as required by me, are as follows: [Specify particulars.]
- 3 On considering the application I found/did not find* that there were reasonable grounds for issuing the warrant.
- 4 The relevant particulars of the grounds on which I relied to justify the issue of/refusal to issue [Delete whichever is inapplicable] the warrant are as follows: [Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.]
- 5 [To be completed if the warrant may be executed by night.]
The grounds on which I relied to justify the execution of the warrant by night are as follows:
 - (a)* execution of the warrant by day is unlikely to be successful,
 - (b)* there is likely to be less risk to the safety of any person if it is executed by night,
 - (c)* an occupier is likely to be on the premises only at night to allow entry without the use of force,
 - (d)* [Other grounds].
- 6 The search warrant was issued at [Time] on [Date].

Eligible issuing officer [Print name and insert signature.]

[* Delete if inapplicable.]

Note. Return this Form, together with a copy of the warrant and a copy of the occupier's notice, to the Local Court registry named in the occupier's notice.

Form 2 Application for covert search warrant/record of application

(Clauses 4 (1) (b) and 5 (b))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Note. This Form is to be used for covert search warrants in relation to serious offences within the meaning of section 46A of the *Law Enforcement (Powers and Responsibilities) Act 2002*. Form 1 should be used for Part 5 search warrants (other than covert or criminal organisation search warrants) and Form 4 should be used for other search warrants.

Part 1 Application

On [Date], I, [Name and rank or position] of [Place of work], apply for a covert search warrant to enter and search the premises known as [Address] (the subject premises) in the State of New South Wales, being a [Description of subject premises (eg dwelling house)].

I swear/solemnly, sincerely and truly declare and affirm* that:

- 1 I have been authorised to make this application by [Name and rank or position] of [Place of work].
A copy of the authorisation is attached.

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

- 2 I have reasonable grounds for suspecting that:
- (a) there is, or within 10 days will be, in or on the subject premises, the following things: *[List items to be searched for. If exact location of items is known, include that information.]*
 - (b) the things are of a kind connected with the following searchable offence(s) within the meaning of section 46A (1) (b) of the *Law Enforcement (Powers and Responsibilities) Act 2002*: *[Insert description of offence(s).]*
- 3 I consider that it is necessary for the entry and search of the subject premises to be conducted without the knowledge of any occupier of the subject premises.
- 4 The name of the occupier of the subject premises is *[Insert name or "not known"]*.
- 5 I believe each of the following persons has committed, or is intending to commit, a searchable offence as follows: *[Insert names and the relevant searchable offence for each name or "names not known"]*.
- 6 I believe/do not believe* the occupier of the subject premises is knowingly concerned with the commission of the searchable offence(s) of *[Insert description of offence(s).]*
- 7 I rely on the following grounds in support of this application: *[Insert the reasonable grounds on which the application for the covert search warrant is based. If space is insufficient, continue overleaf or attach a separate sheet.]*
- 8* The following powers are proposed to be exercised on entry to the subject premises for the purpose of concealing anything done in the execution of the warrant in accordance with section 47A (2) (d) of the *Law Enforcement (Powers and Responsibilities) Act 2002*: *[Insert description of powers.]*
- 9* I seek authorisation to place a thing in substitution for a seized thing.
- 10* I seek that the covert search warrant authorise the following:
- (a)* the return of a thing seized from the subject premises,
 - (b)* the retrieval of a thing from the subject premises placed in substitution for a thing seized from the premises,
 - (c)* the re-entry to the subject premises to return or retrieve the thing within a period longer than 7 days after the first entry under this warrant.
- 11* I seek authority for service of the occupier's notice on the occupier of the subject premises to be postponed for *[Insert period of up to 6 months]*, on the following grounds: *[Specify grounds.]*
- 12* For the purposes of entering the subject premises, I consider that it is necessary to enter premises adjoining or providing access to the subject premises (the adjoining premises) without the knowledge of the occupier of the adjoining premises, on the following grounds: *[Specify grounds.]*
- 13* The address or other description of the adjoining premises *[Specify address or other description of adjoining premises.]*
- 14* I seek that the service of the adjoining occupier's notice on the occupier of the adjoining premises be dispensed with, on the following grounds: *[Specify grounds.]*
- [15 is to be completed if a previous covert search warrant in respect of the subject premises has been issued.]*
- 15* The following are details of a previous covert search warrant issued in respect of the subject premises:
- [16 and 17 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of the previous application to this Form.]*
- 16* The following are details of the refusal of a previous application:
- 17* The additional information that I consider justifies the making of this further application is:
- 18* I seek that a certificate pursuant to clause 13 of the *Law Enforcement (Powers and Responsibilities) Regulation 2016* be issued, on the following grounds: *[Specify grounds.]*

Sworn/declared and affirmed* before me on *[Date]* at *[Place]* in the State of New South Wales.

Applicant *[Print name and insert signature.]*

Justice of the Peace *[Print name and insert signature.]*

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

[This application may be sworn before the eligible issuing officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.]

[Delete if inapplicable.]*

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the eligible issuing officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Eligible issuing officer's record of application for a covert search warrant

On [Date] at [Time], I, the undersigned eligible issuing officer, received this application for a covert search warrant.

- 1* *[To be completed if the application was not made in person.]*
The application was made by *[Specify how the application was made (eg facsimile, telephone)]* and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.
- 2* *[To be completed if the eligible issuing officer required the applicant to provide further information concerning the grounds on which the warrant was sought.]*
*Further information provided by the applicant, as required by me, is attached.
*Particulars of further information orally provided by the applicant, as required by me, are as follows: *[Specify particulars.]*
- 3 On considering the application I found/did not find* that there were reasonable grounds for issuing the warrant.
- 4 The relevant particulars of the grounds on which I relied to justify the issue of/refusal to issue* the warrant are as follows: *[Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.]*
- 5 The covert search warrant was issued at [Time] on [Date].

Eligible issuing officer *[Print name and insert signature.]*

[Delete if inapplicable.]*

Note. Return this Form, together with a copy of the covert search warrant and a copy of the occupier's notice, to the Supreme Court registry named in the occupier's notice.

Form 3 Application for criminal organisation search warrant/record of application

(Clauses 4 (1) (c) and 5 (c))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Note. This Form is to be used for search warrants in relation to organised crime offences. Form 1 should be used for other Part 5 search warrants, Form 2 should be used for covert search warrants and Form 4 should be used for search warrants (other than Part 5 search warrants).

Part 1 Application

On [Date], I, [Name and rank] of [Place of work], apply for a search warrant to enter and search the premises known as [Address] in the State of New South Wales, being a [Description of premises (eg dwelling house)].

I swear/solemnly, sincerely and truly declare and affirm* that:

- 1 I have been authorised to make this application by [Name and rank or position] of [Place of work].
A copy of the authorisation is attached.

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

- 2 I have reasonable grounds for suspecting that:
- (a) there is, or within 7 days will be, in or on the premises, the following things: [*List items to be searched for. If exact location of items is known, include that information.*]
 - (b) the things are connected with the following searchable offence(s) within the meaning of section 46A (1) (c) of the *Law Enforcement (Powers and Responsibilities) Act 2002*: [*Insert description of offence(s).*]
- 3 The name of the occupier of the premises is [*Insert name or "not known".*]
- 4 I believe each of the following persons has committed, or is intending to commit, a searchable offence as follows: [*Insert names and the relevant searchable offence for each name or "names not known".*]
- 5 I believe/do not believe* the occupier of the premises is knowingly concerned with the commission of the searchable offence(s) of [*Insert description of offence(s).*]
- 6 I rely on the following grounds in support of this application: [*Insert the reasonable grounds on which the application for the search warrant is based. If space is insufficient, continue overleaf or attach a separate sheet.*]
- [*7 and 8 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of the previous application to this Form.*]
- 7* The following are details of the refusal of a previous application:
- 8* The additional information that I consider justifies the making of this further application is:
- 9* I seek that a certificate pursuant to clause 13 of the *Law Enforcement (Powers and Responsibilities) Regulation 2016* be issued, on the following grounds: [*Specify grounds*]

Sworn/declared and affirmed* before me on [*Date*] at [*Place*] in the State of New South Wales.

Applicant [*Print name and insert signature.*]

Justice of the Peace [*Print name and insert signature.*]

[*This application may be sworn before the eligible issuing officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.*]

[* *Delete if inapplicable.*]

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the eligible issuing officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Eligible issuing officer's record of application for a search warrant

On [*Date*] at [*Time*], I, the undersigned eligible issuing officer, received this application for a search warrant.

- 1* [*To be completed if the application was not made in person.*]
The application was made by [*Specify how the application was made (eg facsimile, telephone)*] and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.
- 2* [*To be completed if the eligible issuing officer required the applicant to provide further information concerning the grounds on which the warrant was sought.*]
*Further information provided by the applicant, as required by me, is attached.
*Particulars of further information orally provided by the applicant, as required by me, are as follows: [*Specify particulars.*]
- 3 On considering the application I found/did not find* that there were reasonable grounds for issuing the warrant.

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

- 4 The relevant particulars of the grounds on which I relied to justify the issue of/refusal to issue [*Delete whichever is inapplicable*] the warrant are as follows: [*Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.*]
- 5 [*To be completed if the warrant may be executed by night.*]
The grounds on which I relied to justify the execution of the warrant by night are as follows:
- (a)* execution of the warrant by day is unlikely to be successful,
 - (b)* there is likely to be less risk to the safety of any person if it is executed by night,
 - (c)* an occupier is likely to be on the premises only at night to allow entry without the use of force,
 - (d)* [*Other grounds*].
- 6 The search warrant was issued at [*Time*] on [*Date*].

Eligible issuing officer [*Print name and insert signature.*]

[* *Delete if inapplicable.*]

Note. Return this Form, together with a copy of the warrant and a copy of the occupier's notice, to the Supreme Court registry named in the occupier's notice.

Form 4 Application for search warrant (other than Part 5 search warrant)/record of application

(Clauses 4 (1) (d) and 5 (d))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Note. Form 1, rather than this Form, is to be used for search warrants in relation to indictable, firearms, prohibited weapons, narcotics, child pornography or child prostitution offences or stolen goods.

Part 1 Application

On [*Date*], I, [*Name*], apply for a search warrant to enter the premises known as [*Address*] in the State of New South Wales, being a [*Description of premises (eg dwelling house)*].

I swear/solemnly, sincerely and truly declare and affirm* that:

- 1* I am a police officer of the rank of [*Rank*] stationed at [*Place of work*].
- 2 I am authorised to apply for a search warrant under [*Insert section and name of the Act under which search warrant is sought.*]
- 3 I have reasonable grounds for believing the following matters that justify this application for the issue of a search warrant: [*Include all those matters that justify the issue of a search warrant to enter the named premises. If an offence or breach of an Act or regulation is alleged, specify the particular offence. If the experience of the applicant or source of the information is relevant, then include this in the grounds. If space is insufficient, continue overleaf or attach a separate sheet.*]
- 4 I seek to be able to perform the following specific functions on entry: [*Include the powers that the applicant seeks to exercise on entry. If any items are to be seized, they should be specified. If the exact location of these items is known, include that information. General powers that are given under the Act authorising the issue of the search warrant should be included if relevant.*]

[*5 and 6 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of the previous application to this Form.*]

5 The following are details of the refusal of a previous application:

6 [*Need not be completed if the previous application was made to an authorised officer who was not a Magistrate and this application is made to a Magistrate.*]

The additional information that I consider justifies the making of this further application is:

Sworn/declared and affirmed* before me on [*Date*] at [*Place*] in the State of New South Wales.

Applicant [*Print name and insert signature.*]

Justice of the Peace [*Print name and insert signature.*]

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

[This application may be sworn before the authorised officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.]

[Delete if inapplicable.]*

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the authorised officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Authorised officer's record of application for a search warrant

On *[Date]* at *[Time]*, I, the undersigned authorised officer, received this application for a search warrant.

- 1 *[To be completed if the application was not made in person.]*
The application was made by *[Specify how application was made (eg facsimile, telephone).]* and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.
- 2* *[To be completed if the authorised officer required the applicant to provide further information concerning the grounds on which the warrant was sought.]*
*Further information provided by the applicant, as required by me, is attached.
*Particulars of further information orally provided by the applicant, as required by me, are as follows: *[Specify particulars.]*
- 3 On considering the application I found/did not find* that there were reasonable grounds for issuing the warrant.

[If the warrant is issued—continue.]

- 4 The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows: *[Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.]*
- 5 *[To be completed if the warrant may be executed by night.]*
The grounds on which I relied to justify the execution of the warrant by night are as follows:
 - (a)* execution of the warrant by day is unlikely to be successful,
 - (b)* there is likely to be less risk to the safety of any person if it is executed by night,
 - (c)* an occupier is likely to be on the premises only at night to allow entry without the use of force,
 - (d)* *[Other grounds].*
- 6 The search warrant was issued at *[Time]* on *[Date]*.

Authorised officer *[Print name and insert signature.]*

Date

[Delete if inapplicable.]*

Note. Return this Form, together with a copy of the warrant and a copy of the occupier's notice, to the Local Court registry named in the occupier's notice. If no occupier's notice was issued, return this Form and a copy of the warrant to the Local Court registry at which the warrant was issued or nearest to the place at which it was issued.

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

Form 5 Application/record of application for warrant relating to suspected domestic violence offence—entry by warrant where entry denied

(Clauses 4 (1) (e) and 5 (e))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Part 1 Application

On [Date], I, [Name and rank] of [Place of work], apply for a warrant to enter the dwelling at [Address] in the State of New South Wales and to investigate whether a domestic violence offence has taken place/to take action to prevent the commission/further commission* of a domestic violence offence.

I swear/solemnly, sincerely and truly declare and affirm* that:

- 1 I have been denied entry to the dwelling or have been expressly refused authority to remain in the dwelling by an occupier of the dwelling.
- 2 I suspect that:
 - (a) a domestic violence offence is being committed/may have been recently committed/is imminent/is likely to be committed in the dwelling*, and
 - (b) it is necessary for a police officer to enter the dwelling immediately in order to:
 - (i) *investigate whether a domestic violence offence has been committed, or
 - (ii) *to take action to prevent the commission/further commission* of a domestic violence offence.
- 3 I rely on the following grounds in support of this application: *[Include all those matters that justify the issue of a warrant, such as the particular domestic violence offence concerned (if known), observations of police attending the premises, any information from the suspected offender or suspected victim, any information from third parties (eg neighbours) and details of the denial of entry to the dwelling (including anything said or done). If space is insufficient, continue overleaf or attach a separate sheet.]*

[4 and 5 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of the previous application to this Form.]

4 The following are details of the refusal of a previous application:

5 *[Need not be completed if the previous application was made to an authorised officer who was not a Magistrate and this application is made to a Magistrate.]*

The additional information that I consider justifies the making of this further application is:

Sworn/declared and affirmed* before me on [Date] at [Place] in the State of New South Wales.

Applicant *[Print name and insert signature.]*

Justice of the Peace *[Print name and insert signature.]*

[This application may be sworn before the authorised officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.]

[Delete if inapplicable.]*

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the authorised officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

Part 2 Authorised officer's record of application for a warrant

On [Date] at [Time], I, the undersigned authorised officer, received this application for a warrant issued under section 83 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

- 1 [To be completed if the application was not made in person.]
The application was made by [Specify how the application was made (eg, facsimile, telephone).] and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.
- 2* [To be completed if the authorised officer required the applicant to provide further information concerning the grounds on which the warrant was sought.]
*Further information provided by the applicant, as required by me, is attached.
*Particulars of further information orally provided by the applicant, as required by me, are as follows: [Specify particulars.]
- 3 On considering the application I found/did not find* that there were reasonable grounds for the applicant's suspicion.
[If the warrant is issued—continue.]
- 4 The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows: [Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.]
- 5 [To be completed if the warrant may be executed by night.]
The grounds on which I relied to justify the execution of the warrant by night are as follows:
 - (a)* execution of the warrant by day is unlikely to be successful,
 - (b)* there is likely to be less risk to the safety of any person if it is executed by night,
 - (c)* an occupier is likely to be on the premises only at night to allow entry without the use of force,
 - (d)* [Other grounds].
- 6 The warrant was issued at [Time] on [Date].

Authorised officer [Print name and insert signature.]

Date

[* Delete if inapplicable.]

Note. Return this Form, together with a copy of the warrant, to the Local Court registry at which the warrant was issued or nearest to the place at which it was issued.

Form 6 Application for crime scene warrant/record of application

(Clauses 4 (1) (f) and 5 (f))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Part 1 Application

On [Date], I, [Name and rank] of [Place of work], apply for a crime scene warrant to enter the premises known as [Address] in the State of New South Wales, being a [Description of premises (eg dwelling house)], and to exercise all reasonably necessary crime scene powers at, or in relation to, [Specify crime scene].

I swear/solemnly, sincerely and truly declare and affirm* that:

- 1 I have reasonable grounds for suspecting that it is necessary to exercise crime scene powers at the crime scene for the purpose of preserving, or searching for and gathering, evidence of the commission of:
 - (a)* the offence of [Specify offence.], which is a serious indictable offence.
 - (b)* the offence of [Specify offence.] that is being/was/may have been* committed in connection with a traffic accident that has resulted in the death of/serious injury to* a person.
- 2 I rely on the following grounds in support of this application: [Insert the reasonable grounds on which the application for the crime scene warrant is based. If space is insufficient, continue overleaf or attach a separate sheet.]

[3 and 4 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of the previous application to this Form.]

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

3 The following are details of the refusal of a previous application:

4 *[Need not be completed if the previous application was made to an authorised officer who was not a Magistrate and this application is made to a Magistrate.]*

The additional information that I consider justifies the making of this further application is:

Sworn/declared and affirmed* before me on *[Date]* at *[Place]* in the State of New South Wales.

Applicant *[Print name and insert signature.]*

Justice of the Peace *[Print name and insert signature.]*

[This application may be sworn before the authorised officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.]

[Delete if inapplicable.]*

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the authorised officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Authorised officer's record of application for a crime scene warrant

On *[Date]* at *[Time]*, I, the undersigned authorised officer, received this application for a crime scene warrant.

1 *[To be completed if the application was not made in person.]*

The application was made by *[Specify how the application was made (eg facsimile, telephone).]* and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.

2* *[To be completed if the authorised officer required the applicant to provide further information concerning the grounds on which the warrant was sought.]*

*Further information provided by the applicant, as required by me, is attached.

*Particulars of further information orally provided by the applicant, as required by me, are as follows: *[Specify particulars.]*

3 On considering the application I found/did not find* that there were reasonable grounds for issuing the warrant.

[If the warrant is issued—continue.]

4 The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows: *[Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.]*

5 *[To be completed if the warrant may be executed by night.]*

The grounds on which I relied to justify the execution of the warrant by night are as follows:

(a)* execution of the warrant by day is unlikely to be successful,

(b)* there is likely to be less risk to the safety of any person if it is executed by night,

(c)* an occupier is likely to be on the premises only at night to allow entry without the use of force,

(d)* *[Other grounds].*

6 The crime scene warrant was issued at *[Time]* on *[Date]*.

Authorised officer *[Print name and insert signature.]*

Date

[Delete if inapplicable.]*

Note. Return this Form, together with a copy of the warrant and a copy of the occupier's notice, to the Local Court registry named in the occupier's notice.

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

Form 7 Application for warrant to use dog to carry out general drug detection/record of application

(Clauses 4 (1) (g) and 5 (g))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Part 1 Application

On [Date], I, [Name and rank] of [Place of work], apply for a warrant to use a dog to carry out general drug detection in a public place in New South Wales, being [Address/description of public place] during the period/periods* of [Describe period/periods].

I swear/solemnly, sincerely and truly declare and affirm* that:

- 1 I have reasonable grounds for believing that the persons at the public place may include persons committing drug offences.
- 2 I rely on the following grounds in support of this application: *[Insert the reasonable grounds on which the application for the search warrant is based. If an offence or breach of an Act or regulation is alleged, specify the particular offence. If the experience of the applicant or source of the information is relevant, then include this in the grounds. If space is insufficient, continue overleaf or attach a separate sheet.]*
- 3 Any general drug detection to be carried out under the warrant will/will not* be part of a covert police operation. The reason the warrant is to be part of a covert police operation is:

[4 and 5 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of the previous application to this Form.]

- 4 The following are details of the refusal of a previous application:

- 5 *[Need not be completed if the previous application was made to an authorised officer who was not a Magistrate and this application is made to a Magistrate.]*

The additional information that I consider justifies the making of this further application is:

Sworn/declared and affirmed* before me on [Date] at [Place] in the State of New South Wales.

Applicant *[Print name and insert signature.]*

Justice of the Peace *[Print name and insert signature.]*

[This application may be sworn before the authorised officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.]

[Delete if inapplicable.]*

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the authorised officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Authorised officer's record of application for a warrant

On [Date] at [Time], I, the undersigned authorised officer, received this application for a warrant under Division 2 of Part 11 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

- 1 *[To be completed if the application was not made in person.]*
The application was made by *[Specify how the application was made (eg facsimile, telephone).]* and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.

- 2* *[To be completed if the authorised officer required the applicant to provide further information concerning the grounds on which the warrant was sought.]*

*Further information provided by the applicant, as required by me, is attached.

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

*Particulars of further information orally provided by the applicant, as required by me, are as follows: [*Specify particulars.*]

3 On considering the application I found/did not find* that there were reasonable grounds for issuing the warrant.

[*If the warrant is issued—continue.*]

4 The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows: [*Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.*]

5 [*To be completed if the warrant may be executed by night.*]

The grounds on which I relied to justify the execution of the warrant by night are as follows:

- (a) *execution of the warrant by day is unlikely to be successful,
- (b) *there is likely to be less risk to the safety of any person if it is executed by night,
- (c) **[Other grounds]*.

6 The warrant was issued at [*Time*] on [*Date*].

Authorised officer [*Print name and insert signature.*]

Note. Return this Form, together with a copy of the warrant, to the Local Court registry at which the warrant was issued or nearest to the place at which it was issued.

Form 8 Application for notice to produce documents/record of application

(Clauses 4 (1) (h) and 5 (h))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Part 1 Application

On [*Date*], I, [*Name and rank*] of [*Place of work*], apply for a notice to require documents believed to be held by [*Specify name of authorised deposit-taking institution.*], an authorised deposit-taking institution, to be produced to me.

I swear/solemnly, sincerely and truly declare and affirm* that:

1 I have reasonable grounds for believing that [*Specify name of authorised deposit-taking institution.*] holds documents that may be connected with the offence of [*Specify offence.*] committed by someone other than that institution.

2 The documents in relation to which this application is made are: [*Describe documents and (if desired) form (eg hardcopy, mail, CD in RTF format, facsimile), together with details of where applicant wishes documents to be produced (eg premises where to be produced, email address, fax number (including person to whom fax to be addressed)). The applicant may wish to specify a combination of types of forms in which documents may be produced.*]

3 I rely on the following grounds in support of this application: [*Insert the reasonable grounds on which the application for the notice to produce documents is based. If space is insufficient, continue overleaf or attach a separate sheet.*]

[*4 and 5 are to be completed if a previous application for the notice has been made and refused. Attach a copy of the previous application to this Form.*]

4 The following are details of the refusal of a previous application:

5 [*Need not be completed if the previous application was made to an authorised officer who was not a Magistrate and this application is made to a Magistrate.*]

The additional information that I consider justifies the making of this further application is:

Sworn/declared and affirmed* before me on [*Date*] at [*Place*] in the State of New South Wales.

Applicant [*Print name and insert signature.*]

Justice of the Peace [*Print name and insert signature.*]

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

[This application may be sworn before the authorised officer to whom the application is made for the issue of the notice. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.]

[Delete if inapplicable.]*

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the authorised officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Authorised officer's record of application for a notice to produce documents

On [Date] at [Time], I, the undersigned authorised officer, received this application for a notice to produce documents.

- 1 *[To be completed if the application was not made in person.]*
The application was made by *[Specify how the application was made (eg facsimile, telephone).]* and I was/was not* satisfied that the notice was required urgently and it was/was not* practicable for the application to be made in person.
- 2* *[To be completed if the authorised officer required the applicant to provide further information concerning the grounds on which the notice was sought.]*
*Further information provided by the applicant, as required by me, is attached.
*Particulars of further information orally provided by the applicant, as required by me, are as follows: *[Specify particulars.]*
- 3 On considering the application I found/did not find* that there were reasonable grounds for issuing the notice.

[If the notice is issued—continue.]

- 4 The relevant particulars of the grounds on which I relied to justify the issue of the notice are as follows: *[Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.]*
- 5 The notice was issued at [Time] on [Date].

Authorised officer *[Print name and insert signature.]*

[Delete if inapplicable.]*

Note. Return this Form, together with a copy of the notice to the Local Court registry at which the notice was issued or nearest to the place at which it was issued.

Form 9 Application for warrant for arrest of person unlawfully at large/record of application

(Clauses 4 (2) and 5 (i))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Part 1 Application

On [Date], I, [Name and rank] of [Place of work], apply for a warrant for the arrest of *[Specify name of person.]*

I swear/solemnly, sincerely and truly declare and affirm* that:

- 1 I have reasonable grounds for believing that *[Specify name of person.]* is unlawfully at large.
- 2 Other known identifying particulars of *[Name of person who is unlawfully at large]* are as follows: *[Insert particulars, if known, such as date of birth, last known address, management index number (MIN) allocated by the Department of Corrective Services.]*

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

3 I rely on the following grounds in support of this application: *[Insert the reasonable grounds on which the application for the warrant is based. If space is insufficient, continue overleaf or attach a separate sheet.]*

Sworn/declared and affirmed* before me on *[Date]* at *[Place]* in the State of New South Wales.

Applicant *[Print name and insert signature.]*

Justice of the Peace *[Print name and insert signature.]*

[This application may be sworn before the authorised officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.]

[Delete if inapplicable.]*

Part 2 Authorised officer's record of application for warrant

On *[Date]* at *[Time]*, I, the undersigned authorised officer, received this application for a search warrant.

1 On considering the application I found/did not find* that there were reasonable grounds for issuing the warrant.

[If the warrant is issued—continue.]

2 The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows: *[Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.]*

3 The warrant was issued at *[Time]* on *[Date]*.

Authorised officer *[Print name and insert signature.]*

[Delete if inapplicable.]*

Note. Return this Form, together with a copy of the warrant, to the Local Court registry at which the warrant was issued or that is nearest to the place at which it was issued.

Form 10 Application for detention warrant/record of application

(Clauses 4 (3) and 5 (j))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Part 1 Application

On *[Date]*, I, *[Name and rank]* of *[Place of work]*, apply for a warrant to extend the maximum investigation period beyond 6 hours in relation to *[Name of detained person]* of *[Address]* by *[Specify hours and minutes.]* (excluding times that are to be taken into account under section 117 of the *Law Enforcement (Powers and Responsibilities) Act 2002*) from *[Time]* on *[Date]*.

I swear/solemnly, sincerely and truly declare* and affirm that:

1 The detained person was arrested (within the meaning of Part 9 of the *Law Enforcement (Powers and Responsibilities) Act 2002*) at *[Time]* on *[Date]*.

2 The nature of the offence under investigation is as follows: *[Specify nature of offence.]*

3 The general nature of the evidence on which the detained person was arrested is as follows: *[Specify nature of evidence.]*

4 The following investigation has taken place to date: *[Specify details.]*

5 Further investigation of the offence is proposed as follows: *[Specify details.]*

6 The period (if any) during which the person was a protected suspect in relation to the investigation.

7 Details of the times that under section 117 of the *Law Enforcement (Powers and Responsibilities) Act 2002* are not to be taken into account are as follows: *[Specify the nature and duration of the times and the reasons why they are not to be taken into account.]*

8 The detained person has co-operated in the investigation to date as follows: *[Specify details and extent to which the person has co-operated.]*

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

- 9 The detained person has/does not* have a legal representative.
- 10 The detained person has/has not* been informed of the right of the detained person, or the detained person's legal representative, to make representations to the authorised officer.
- 11 The detained person, or the detained person's legal representative, has/has not* requested to make representations to the authorised officer.
- 12 I believe that the continued detention of the detained person is reasonably necessary to complete the investigation for the following reasons: [*Specify reasons.*]
- 13 I believe that there is no reasonable alternative means of completing the investigation otherwise than by the continued detention of the person for the following reasons: [*Specify reasons.*]
- 14 I believe that the following circumstances make it impracticable for the investigation to be completed within the 6-hour period that would apply if this application is refused: [*Specify circumstances.*]
- 15* The detained person is a vulnerable person as the detained person is a child/Aboriginal person/Torres Strait Islander/is of non-English speaking background/has impaired intellectual functioning/has impaired physical functioning*.
- 16* [*Name*] of [*Address*] is present at the place of detention as a support person for the detained person. The support person is [*Specify relationship to detained person.*]
- 17* The following precautions have been taken in respect of the detained person because of the detained person's vulnerability: [*Specify precautions.*]
- [18 and 19 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of the previous application to this Form.]
- 18 The following are details of the refusal of a previous application: [*Specify details.*]
- 19 The additional information that I consider justifies the making of this further application is: [*Specify details.*]

Sworn/declared and affirmed* before me on [*Date*] at [*Place*] in the State of New South Wales.

Applicant [*Print name and insert signature.*]

Justice of the Peace [*Print name and insert signature.*]

[*This application may be sworn before the authorised officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexures should be initialled or signed by the applicant and witnessed by the justice of the peace.*]

[* *Delete if inapplicable.*]

Warning

It is an offence under section 63 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this application knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Note. In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the authorised officer for record purposes as if it were made in person by the applicant but not verified on oath or affirmation or by affidavit.

Part 2 Authorised officer's record of application for a warrant

On [*Date*] at [*Time*], I, the undersigned authorised officer, received this application for a detention warrant issued under Part 9 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

- 1 [*To be completed if the application was not made in person.*]
The application was made by [*Specify how the application was made (eg facsimile, telephone).*] and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.
- 2* [*To be completed if the authorised officer required the applicant to provide further information concerning the grounds on which the warrant was sought.*]
*Further information provided by the applicant, as required by me, is attached.
*Particulars of further information orally provided by the applicant, as required by me, are as follows: [*Specify particulars.*]

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

3* *[To be completed if the detained person, or the detained person's legal representative, made representations to the authorised officer.]*

Particulars of representations made to me by the detained person, or the detained person's legal representative are as follows: *[If space is insufficient, continue overleaf or attach a separate sheet.]*

4 On considering the application I was/was not* satisfied that each of the following criteria were met:

- (a) the investigation is being conducted diligently and without delay,
- (b) a further period of detention of the detained person is reasonably necessary to complete the investigation,
- (c) there is no reasonable alternative means of completing the investigation otherwise than by the continued detention of the person,
- (d) circumstances exist in the matter that make it impracticable for the investigation to be completed within the 6-hour period.

[If the warrant is issued—continue.]

5 The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows: *[Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.]*

6 The maximum investigation period for the detained person is extended by *[Specify hours and minutes.]* (excluding times that are not to be taken into account under section 117 of the *Law Enforcement (Powers and Responsibilities) Act 2002*) from *[Time]* on *[Date]*.

7 The warrant was issued at *[Time]* on *[Date]*.

Authorised officer *[Print name and insert signature.]*

[Delete if inapplicable.]*

Note. Return this Form, together with a copy of the warrant, to the Local Court registry at which the warrant was issued or nearest to the place at which it was issued.

Form 11 Part 5 search warrant (other than covert or criminal organisation search warrant)

(Clause 6 (1) (a))

(Law Enforcement (Powers and Responsibilities) Act 2002)

This search warrant expires at *[Time]* on *[Date]* and must not be used after that time.

On *[Date]*, an eligible issuing officer empowered to grant search warrants under Division 2 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this search warrant authorising *[Name and rank]* of *[Place of work]* (the applicant), a police officer, and all other police officers, as follows:

1 To enter the premises known as *[Address]* being a *[Description of premises (eg dwelling house)]*.

2* To search those premises for any of the following things: *[List and describe the things to be searched for with particularity. If space is insufficient, continue overleaf or attach a separate sheet.]*
The applicant has reasonable grounds for believing that those things are connected with the following searchable offences: *[Specify relevant offences.]*

3* To search those premises in connection with the following child prostitution offence(s): *[Specify the offences under the Crimes Act 1900 in relation to which the search is to be made.]*

This search warrant may be executed:

(a)* only by day (ie between 6 am and 9 pm)

(b)* by day (ie between 6 am and 9 pm) or night (ie between 9 pm and 6 am).

[Delete if inapplicable.]*

In executing this search warrant a police officer may exercise the powers provided by the *Law Enforcement (Powers and Responsibilities) Act 2002*. These include the following powers:

(a) to enter the named premises,

(b) to search for the things (if any) mentioned in this warrant,

(c) to use any persons necessary to assist in the execution of the warrant,

(d) to use such force as is reasonably necessary to enter the premises,

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

- (e) to break open any receptacle in or on the premises for the purposes of the search of the premises if it is reasonably necessary to do so,
- (f) to search any persons found in or on the premises who are reasonably suspected of having a thing mentioned in this warrant,
- (g) to arrest any persons found in or on the premises whom a police officer suspects on reasonable grounds of having committed an offence,
- (h) to seize, detain, remove from the premises or guard anything mentioned in this warrant and any other thing found by a police officer in the course of executing this warrant that the police officer believes on reasonable grounds is connected with any offence,
- (i) if the warrant is issued in relation to a child prostitution offence—to make, in the premises, inquiries relating to any such offence,
- (j) to disable any alarm, camera or surveillance device at the premises,
- (k) to pacify any guard dog at the premises,
- (l) to render safe any dangerous article found in or on the premises,
- (m) to operate electronic and other equipment brought to the premises or at the premises to examine a thing found at the premises,
- (n) to move a thing found at the premises to another place for examination in order to determine whether it is or contains a thing that may be seized,
- (o) to operate equipment at the premises to access data (including data held at premises other than the subject premises),
- (p) to do anything that it is reasonably necessary to do for the purpose of preventing the loss or destruction of, or damage to, any thing connected with an offence that the police believe on reasonable grounds to be at those premises, including by blocking any drains at or used in connection with the premises.

Signed [*Insert signature.*]

Date

[The eligible issuing officer should sign and date the warrant and initial any corrections. In the case of a telephone search warrant, in circumstances where the warrant is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the eligible issuing officer and write on it the date and time when the warrant was signed.]

Form 12 Covert search warrant

(Clause 6 (1) (b))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Part 1 Information about this covert search warrant

This covert search warrant expires at [*Time*] on [*Date*] and must not be used after that time.

On [*Date*], an eligible issuing officer empowered to grant covert search warrants under Division 2 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this covert search warrant authorising [*Name and rank or position*] of [*Place of work*] (the applicant), any police officer, any member of staff of the Police Integrity Commission and any member of staff of the New South Wales Crime Commission [*Delete any that are not applicable*], as follows:

- 1 To enter the premises known as [*Address*] being a [*Description of premises (eg dwelling house)*].
- 2 To search those premises for any of the following things: [*List and describe the things to be searched for with particularity. If space is insufficient, continue overleaf or attach a separate sheet.*]
The applicant has reasonable grounds for suspecting that those things are of a kind connected with the offence(s) of: [*Specify relevant offences.*]

This covert search warrant may be executed by day or by night.

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

In executing this covert search warrant, the following powers may be exercised under the *Law Enforcement (Powers and Responsibilities) Act 2002*. These include the following powers:

- (a) to enter the named premises with or without the knowledge of any occupier of the premises,
- (b) to search for the things (if any) mentioned in this warrant with or without the knowledge of any occupier of the premises,
- (c) to use any persons necessary to assist in the execution of the warrant,
- (d) to use such force as is reasonably necessary to enter the premises,
- (e) to break open any receptacle in or on the premises for the purposes of the search of the premises if it is reasonably necessary to do so,
- (f) to search any persons found in or on the premises who are reasonably suspected of having a thing mentioned in this warrant,
- (g) to arrest any persons found in or on the premises whom a police officer suspects on reasonable grounds of having committed an offence,
- (h) to seize, detain, remove from the premises or guard anything mentioned in this warrant and any other thing found by an executing officer in the course of executing this warrant that the executing officer believes on reasonable grounds is connected with any offence,
- (i) if the warrant is issued in relation to a child prostitution offence—to make, in the premises, inquiries relating to any such offence,
- (j) to disable any alarm, camera or surveillance device at the premises,
- (k) to pacify any guard dog at the premises,
- (l) to do anything that it is reasonably necessary to do for the purpose of preventing the loss or destruction of, or damage to, any thing connected with an offence that an executing officer believes on reasonable grounds to be at those premises, including by blocking any drains at or used in connection with the premises,
- (m) to impersonate another person for the purposes of executing the warrant,
- (n) to do anything else that is reasonable for the purpose of concealing anything done in the execution of the warrant from the occupier of the premises, including the following: *[Insert powers]*,
- (o) to render safe any dangerous article found in or on the premises,
- (p) to operate electronic and other equipment brought to the premises or at the premises to examine a thing found at the premises,
- (q) to move a thing found at the premises to another place for examination in order to determine whether it is or contains a thing that may be seized,
- (r) to operate equipment at the premises to access data (including data held at premises other than the subject premises).

Part 2 Additional information

- 1* This covert search warrant authorises *[Name and rank or position]* of *[Place of work]* (the applicant), any police officer, any member of staff of the Police Integrity Commission and any member of staff of the New South Wales Crime Commission *[Delete any that are not applicable]*, to enter the following premises that adjoins or provides access to the subject premises specified in Part 1 without the knowledge of the occupier of the adjoining premises: *[Specify address or other description of adjoining premises.]*
- 2* The name of the occupier of the subject premises is *[Name]*.
- 3* The following persons are believed to have committed, or to be intending to commit, the searchable offence(s) specified in Part 1: *[Insert names.]*
- 4 The occupier of the subject premises is/is not* believed to be knowingly concerned with the commission of the searchable offence(s) specified in Part 1.
- 5 This covert search is subject to the following conditions: *[Specify conditions.]*
- 6 The following kinds of things may be placed in substitution for a thing seized from the subject premises: *[Specify kinds of things.]*

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

- 7* This covert search warrant authorises the following:
- (a)* the return of a thing seized from the subject premises,
 - (b)* the retrieval of a thing from the subject premises placed in substitution for a thing seized from the premises,
 - (c)* the re-entry to the subject premises to return or retrieve the thing, but only within [*Insert period*] of the first entry under this warrant.

[* *Delete if inapplicable.*]

Signed [*Insert signature.*]

Date

[The eligible issuing officer should sign and date the warrant and initial any corrections. In the case of a telephone search warrant, in circumstances where the warrant is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the eligible issuing officer and write on it the date and time when the warrant was signed.]

Form 13 Criminal organisation search warrant

(Clause 6 (1) (c))

(Law Enforcement (Powers and Responsibilities) Act 2002)

This search warrant expires at [*Time*] on [*Date*] and must not be used after that time.

On [*Date*], an eligible issuing officer empowered to grant search warrants under Division 2 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this search warrant authorising [*Name and rank*] of [*Place of work*] (the applicant), a police officer, and all other police officers, as follows:

- 1 To enter the premises known as [*Address*] being a [*Description of premises (eg dwelling house)*].
- 2 To search those premises for any of the following things: [*List and describe the things to be searched for with particularity. If space is insufficient, continue overleaf or attach a separate sheet.*]
The applicant has reasonable grounds for suspecting that those things are connected with the following searchable offences: [*Specify relevant offences.*]

This search warrant may be executed:

- (a)* only by day (ie between 6 am and 9 pm)
- (b)* by day (ie between 6 am and 9 pm) or night (ie between 9 pm and 6 am).

[* *Delete if inapplicable.*]

In executing this search warrant a police officer may exercise the powers provided by the *Law Enforcement (Powers and Responsibilities) Act 2002*. These include the following powers:

- (a) to enter the named premises,
- (b) to search for the things (if any) mentioned in this warrant,
- (c) to use any persons necessary to assist in the execution of the warrant,
- (d) to use such force as is reasonably necessary to enter the premises,
- (e) to break open any receptacle in or on the premises for the purposes of the search of the premises if it is reasonably necessary to do so,
- (f) to search any persons found in or on the premises who are reasonably suspected of having a thing mentioned in this warrant,
- (g) to arrest any persons found in or on the premises whom a police officer suspects on reasonable grounds of having committed an offence,
- (h) to seize, detain, remove from the premises or guard anything mentioned in this warrant and any other thing found by a police officer in the course of executing this warrant that the police officer believes on reasonable grounds is connected with any offence,
- (i) to disable any alarm, camera or surveillance device at the premises,
- (j) to pacify any guard dog at the premises,
- (k) to render safe any dangerous article found in or on the premises,

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

- (l) to operate electronic and other equipment brought to the premises or at the premises to examine a thing found at the premises,
- (m) to move a thing found at the premises to another place for examination in order to determine whether it is or contains a thing that may be seized,
- (n) to operate equipment at the premises to access data (including data held at premises other than the subject premises),
- (o) to do anything that it is reasonably necessary to do for the purpose of preventing the loss or destruction of, or damage to, any thing connected with an offence that the police believe on reasonable grounds to be at those premises, including by blocking any drains at or used in connection with the premises.

Signed [*Insert signature.*]

Date

[The eligible issuing officer should sign and date the warrant and initial any corrections. In the case of a telephone search warrant, in circumstances where the warrant is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the eligible issuing officer and write on it the date and time when the warrant was signed.]

Form 14 Search warrant—other than Part 5 search warrant

(Clause 6 (1) (d))

(Law Enforcement (Powers and Responsibilities) Act 2002)

This search warrant expires at [*Time*] on [*Date*] and must not be used after that time.

On [*Date*], an authorised officer empowered to issue search warrants under [*Insert section and name of the Act under which the warrant is issued.*], granted this search warrant authorising [*Name, designation, etc*] of [*Name of employer or place of work*] (the applicant), and [*Add any additional person (eg a police officer) who is required to accompany applicant.*]:

- 1 to enter the premises known as [*Address*], being a [*Description of premises (eg dwelling house)*] [*Note any restriction under the enabling Act on the category of places that can be entered.*], and
- 2 to [*Specify the type of search or inquiry and the purpose of the search or inquiry to be performed on entry. Functions on entry must be within those authorised by the enabling Act. Specify with particularity anything to be seized. Specify the offence(s), if any, with respect to which search or inquiry is to be made.*]

This search warrant may be executed:

- (a)* only by day (ie between 6 am and 9 pm)
- (b)* by day (ie between 6 am and 9 pm) or night (ie between 9 pm and 6 am).

[* *Delete if inapplicable.*]

In executing this search warrant the applicant may exercise the powers provided by the *Law Enforcement (Powers and Responsibilities) Act 2002* and any other Act named above. These include the following powers:

- (a) to enter the named premises,
- (b) to use any persons necessary to assist in the execution of this warrant,
- (c) to use such force as is reasonably necessary to enter the premises,
- (d) to break open any receptacle on the premises for the purposes of the search of the premises if it is reasonably necessary to do so,
- (e) [*Specify (if relevant) any special additional powers of personal search, seizure, arrest, inspection, etc, provided under the enabling Act.*]

Signed [*Insert signature.*]

Date

[The authorised officer should sign and date the warrant and initial any corrections. In the case of a telephone search warrant, in circumstances where the warrant is issued but not furnished to the applicant

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

(for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the authorised officer and write on it the date and time when the warrant was signed.]

Form 15 Warrant relating to suspected domestic violence offence—entry by warrant where entry denied

(Clause 6 (1) (e))

(Law Enforcement (Powers and Responsibilities) Act 2002)

This warrant expires at [Time] on [Date] and must not be used after that time.

On [Date], [Name of authorised officer], an authorised officer empowered to issue warrants under section 83 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this warrant authorising [Name and rank] of [Place of work] (the applicant) as follows:

- 1 to enter the dwelling at [Address],
- 2 *to investigate whether a domestic violence offence has taken place,
- 3 *to take action to prevent the commission/further commission* of a domestic violence offence.

[* Delete if inapplicable.]

This warrant may be executed:

- (a)* only by day (ie between 6 am and 9 pm)
- (b)* by day (ie between 6 am and 9 pm) or night (ie between 9 pm and 6 am).

[* Delete if inapplicable.]

In executing this warrant the applicant may exercise the powers provided by the *Law Enforcement (Powers and Responsibilities) Act 2002*. These include the following powers:

- (a) to enter the named premises,
- (b) to use any persons necessary to assist in the execution of this warrant,
- (c) to use such force as is reasonably necessary to enter the premises.

However, in executing this warrant the applicant and any other police officers who enter the dwelling are to take only the action in the dwelling that is reasonably necessary:

- (a) to investigate whether a domestic violence offence has been committed, and
- (b) to render aid to any person who appears to be injured, and
- (c) to exercise any lawful power to arrest a person, and
- (d) to prevent the commission or further commission of a domestic violence offence.

A police officer who enters the dwelling under this warrant must inquire as to the presence of any firearms in the dwelling and, if informed that there is a firearm, must take all such action as is reasonably practicable to search for and to seize and detain the firearm.

A police officer who enters the dwelling under this warrant may search the dwelling for a dangerous article and seize and detain the dangerous article if the police officer believes, on reasonable grounds, that:

- (a) the dangerous article is in the dwelling, and
- (b) the dangerous article is being, or was, or may have been or may be used to commit a domestic violence offence.

A police officer entering the dwelling under this warrant is to remain in the dwelling only as long as it is necessary to take the actions required or permitted under Part 6 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Signed [Print name and insert signature.]

Date

[The authorised officer should sign and date the warrant and initial any corrections. In the case of a telephone search warrant, in circumstances where the warrant is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the authorised officer and write on it the name of that authorised officer and the date and time when the warrant was signed.]

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

Form 16 Crime scene warrant

(Clause 6 (1) (f))

(Law Enforcement (Powers and Responsibilities) Act 2002)

This warrant expires at [Time] on [Date] and must not be used after that time.

On [Date], an authorised officer empowered to issue crime scene warrants under Part 7 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this warrant authorising [Name and rank] of [Place of work] (the applicant), a police officer, and all other police officers:

- 1 to enter the premises known as [Address], being a [Description of premises (eg dwelling house)], and
- 2 to exercise all reasonably necessary crime scene powers, as listed in paragraphs (d)–(s) below, at, or in relation to, [Specify crime scene].

The applicant has reasonable grounds for suspecting that it is necessary to exercise crime scene powers at the crime scene for the purpose of preserving, or searching for and gathering, evidence of the commission of:

- (a)* the offence of [Specify offence.], which is a serious indictable offence
- (b)* the offence of [Specify offence.] that is being/was/may have been* committed in connection with a traffic accident that has resulted in the death of/serious injury to* a person.

This warrant may be executed:

- (a)* only by day (ie between 6 am and 9 pm)
- (b)* by day (ie between 6 am and 9 pm) or night (ie between 9 pm and 6 am).

[* Delete if inapplicable.]

In executing this warrant a police officer may exercise the powers provided by the *Law Enforcement (Powers and Responsibilities) Act 2002*. These include the following powers:

- (a) to enter the named premises, using such force as is reasonably necessary for that purpose,
- (b) to use any persons necessary to assist in the execution of this warrant,
- (c) to exercise any lawful power to arrest a person,
- (d) to direct a person to leave the crime scene or remove a vehicle, vessel or aircraft from the crime scene,
- (e) to remove from the crime scene a person who fails to comply with a direction to leave the crime scene or a vehicle, vessel or aircraft a person fails to remove from the crime scene,
- (f) to direct a person not to enter the crime scene,
- (g) to prevent a person from entering the crime scene,
- (h) to prevent a person from removing evidence from or otherwise interfering with the crime scene or anything in it and, for that purpose, detain and search the person,
- (i) to remove or cause to be removed an obstruction from the crime scene,
- (j) to perform any necessary investigation, including, for example, search the crime scene and inspect anything in it to obtain evidence of the commission of an offence,
- (k) to conduct any examination, or process, for the purpose of performing any necessary investigation,
- (l) to open anything at the crime scene that is locked,
- (m) to take electricity, gas or any other utility, for use at the crime scene,
- (n) to direct the occupier of the premises or a person apparently involved in the management or control of the premises to maintain a continuous supply of electricity at the premises,
- (o) to photograph or otherwise record the crime scene and anything in it,
- (p) to seize, detain, remove from the crime scene or guard all or part of a thing that might provide evidence of the commission of an offence,
- (q) to dig up anything at the crime scene,
- (r) to remove wall or ceiling linings or floors of a building, or panels of a vehicle,
- (s) to exercise any other power reasonably necessary or incidental to a power conferred by paragraphs (d)–(r),

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

(t) to stay on the premises for the purpose of exercising the powers set out in paragraphs (d)–(s).

Signed [*Insert signature.*]

Date

[The authorised officer should sign and date the warrant and initial any corrections. In the case of a telephone search warrant, in circumstances where the warrant is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the authorised officer and write on it the date and time when the warrant was signed.]

Form 17 Detention warrant

(Clause 6 (1) (g))

(Law Enforcement (Powers and Responsibilities) Act 2002)

On [*Date*], [*Name of authorised officer*], an authorised officer empowered to issue detention warrants under Part 9 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this warrant to extend the maximum investigation period in relation to [*Name of detained person*] of [*Address*] beyond 6 hours by [*Specify hours and minutes.*] (excluding times that are not to be taken into account under section 117 of the *Law Enforcement (Powers and Responsibilities) Act 2002*) from [*Time*] on [*Date*].

Signed [*Print name and insert signature.*]

Date

[The authorised officer should sign and date the warrant and initial any corrections. In the case of a telephone search warrant, in circumstances where the warrant is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the authorised officer and write on it the name of that authorised officer and the date and time when the warrant was signed.]

Note. If the application for the detention warrant was made by telephone, the applicant must, within one day after the day on which the warrant is issued, give or transmit to the authorised officer an affidavit setting out the information on which the application was based that was given to the authorised officer when the application was made.

Form 18 Warrant authorising use of dog to carry out general drug detection

(Clause 6 (1) (h))

(Law Enforcement (Powers and Responsibilities) Act 2002)

This warrant expires at [*Time*] on [*Date*] and must not be used after that time.

On [*Date*], [*Name of authorised officer*], an authorised officer empowered to issue warrants under Division 2 of Part 11 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this warrant authorising [*Name and rank*] of [*Place of work*] (the applicant), a police officer, and all other police officers, to use a dog to carry out general drug detection in [*Describe public place.*], a public place, during the period/periods* of [*Describe period or periods concerned.*]

This warrant may be executed:

(a)* only by day (ie between 6 am and 9 pm)

(b)* by day (ie between 6 am and 9 pm) or night (ie between 9 pm and 6 am).

In executing this warrant a police officer may exercise the powers provided by the *Law Enforcement (Powers and Responsibilities) Act 2002*. These include the following powers:

(a) to use any persons necessary to assist in the execution of this warrant,

(b) to use a dog to carry out the detection of prohibited drugs or plants in the possession or control of a person.

Signed [*Print name and insert signature.*]

Date

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

[* Delete if inapplicable.]

[The authorised officer should sign and date the warrant and initial any corrections. In the case of a telephone warrant, in circumstances where the warrant is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the authorised officer and write on it the name of that authorised officer and the date and time when the warrant was signed.]

Form 19 Notice to produce documents

(Clause 6 (1) (i))

(Law Enforcement (Powers and Responsibilities) Act 2002)

This notice expires at [Time] on [Date] and must not be given after that time.

On [Date], [Name of authorised officer], an authorised officer empowered to grant notices to produce documents under Division 3 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this notice requiring [Name of authorised deposit-taking institution] or an officer of [Name of authorised deposit-taking institution] to produce the documents described below to [Name and rank] of [Place of work] (the applicant), a police officer by/within* [Time and date or period].

The documents are [Description of documents].

The documents are to be produced [Specify whether documents are to be produced in hardcopy or electronic form (including kind of electronic form, eg email, CD in RTF format, facsimile transmission). If to be produced in hardcopy form, specify address. If to be produced electronically, specify relevant details such as email address, fax number (including person to whom fax to be addressed). The Notice may specify a combination of types of forms in which documents may be produced.]

[* Delete if inapplicable.]

Signed [Print name and insert signature.]

Date

[The authorised officer should sign and date the notice and initial any corrections. In the case of a telephone notice, in circumstances where the notice is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of notice in the terms dictated by the authorised officer and write on it the name of that authorised officer and the date and time when the notice was signed.]

Form 20 Warrant for arrest of person unlawfully at large

(Clause 6 (2))

(Law Enforcement (Powers and Responsibilities) Act 2002)

On [Date], [Name of authorised officer], an authorised officer who is empowered to grant warrants under section 103 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, granted this warrant authorising the arrest of [Name of person who is unlawfully at large], who is unlawfully at large.

Other known identifying particulars of [Name of person who is unlawfully at large] are as follows: [Insert particulars, if known, such as date of birth, last known address, management index number (MIN) allocated by the Department of Corrective Services.]

Signed [Print name and insert signature.]

Date

Form 21 Occupier's notice for Part 5 search warrant (other than covert or criminal organisation search warrant)

(Clause 7 (a))

(Law Enforcement (Powers and Responsibilities) Act 2002)

A search warrant has been issued by an eligible issuing officer. It gives the authority and power to the police to enter and search the premises at [Address], being a [Description of premises (eg dwelling house)].

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

Expiry

The search warrant will expire at [Time] on [Date] / expired on at [Time] on [Date] [Delete whichever is not applicable.]

Warnings

1. You have the right to inspect the search warrant, but you must not hinder or obstruct the search, as to do so may be a criminal offence. Under section 52 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, the maximum penalty for obstructing or hindering a search without reasonable excuse is a fine of \$11,000 or 2 years imprisonment (or both).

2. It is an offence under section 63 (1A) of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this notice knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Powers given by the search warrant

This search warrant authorises police to use such force as is reasonably necessary to enter the premises and to carry out the purposes of the warrant.

The things the police are empowered to search for are: [If space is insufficient, continue overleaf or attach a separate sheet.]

The police can seize, detain, remove from the premises or guard any of the things mentioned in the warrant and anything that they find, while executing the search warrant, that is believed on reasonable grounds to be connected with any offence.

The police also have the power to:

- (a) break open any receptacle in or on the premises for the purposes of the search of the premises if it is reasonably necessary to do so, and
- (b) search any persons on the premises who are reasonably suspected of having a thing that is mentioned in the warrant, and
- (c) arrest any person who is reasonably suspected of committing an offence, and
- (d) if the warrant is issued in relation to a child prostitution offence—make inquiries relating to any such offence, and
- (e) disable any alarm, camera or surveillance device at the premises, and
- (f) pacify any guard dog at the premises, and
- (g) render safe any dangerous article found in or on the premises, and
- (h) operate electronic and other equipment brought to the premises or at the premises to examine a thing found at the premises, and
- (i) move a thing found at the premises to another place for examination in order to determine whether it is or contains a thing that may be seized, and
- (j) operate equipment at the premises to access data (including data held at premises other than the subject premises), and
- (k) do anything that it is reasonably necessary to do for the purpose of preventing the loss or destruction of, or damage to, any thing connected with an offence that the police believe on reasonable grounds to be at those premises, including by blocking any drains at or used in connection with the premises.

Issue details

The search warrant was granted by an eligible issuing officer under the *Law Enforcement (Powers and Responsibilities) Act 2002* on [Date] at [Time].

The warrant was issued on the application of [Name and rank] of [Place of work].

Basis for the issue of the warrant

The warrant was granted on the basis that the eligible issuing officer found that there were reasonable grounds for the issue of the warrant and, in particular, that the applicant had reasonable grounds to believe that:

- (a)* there were on the premises the things listed above, which were things connected with the offence of: [Specify offence.]

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

(b)* a child prostitution offence has been, is being, or will be, committed on or with respect to the premises.

[* *Delete if inapplicable.*]

Challenging the issue of the warrant or the conduct of the search

If you are dissatisfied with the issue of the warrant or the conduct of the search, you should seek legal advice. This advice may assist you to decide whether your rights have been infringed and what action you can take. If your rights have been infringed you may be entitled to a legal remedy.

You should keep this notice as it will assist you if you seek advice.

Limitations on the powers conferred

The following limitations apply to the warrant:

- (a) the warrant must be executed before the date and time of the expiry given above,
- (b) any force used to enter the premises must be reasonably necessary,
- (c) the warrant must be executed between 6 am and 9 pm unless the warrant states that it may be executed by day or night,
- (d) the warrant must be shown to you if you ask to see it,
- (e) nothing other than the things mentioned in the warrant can be seized unless it was found by a police officer while executing the search and the officer believes on reasonable grounds that it is connected with any offence (not including a thing that may be moved to another place for examination in order to determine whether it is or contains a thing that may be seized).

Inspection

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at [*Insert the appropriate Local Court registry.*] You may seek to inspect those documents by arrangement with that registry. You should produce this notice at the registry when seeking to inspect those documents.

Signed [*Insert signature.*] [*In the case of a notice relating to a telephone search warrant, in circumstances where the warrant is issued but the notice is not furnished to the applicant (for example, because facsimile facilities are not available), the applicant officer is to complete this Form of notice in the terms dictated by the eligible issuing officer.*]

Date

Form 22 Occupier's notice for covert search warrant

(Clause 7 (b))

(Law Enforcement (Powers and Responsibilities) Act 2002)

A covert search warrant has been issued by an eligible issuing officer. It gives the authority and power to an executing officer to enter and search the premises at [*Address*], being a [*Description of premises (eg dwelling house)*].

Expiry

The covert search warrant will expire at [*Time*] on [*Date*].

Warning

1. You must not hinder or obstruct the search, as to do so may be a criminal offence. Under section 52 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, the maximum penalty for obstructing or hindering a search without reasonable excuse is a fine of \$11,000 or 2 years imprisonment (or both).
2. It is an offence under section 63 (1A) of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this notice knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Powers given by the covert search warrant

In executing this covert search warrant an executing officer may exercise the powers provided by the *Law Enforcement (Powers and Responsibilities) Act 2002*. These include the following powers:

- (a) to enter the named premises with or without the knowledge of any occupier of the premises,
- (b) to search for the following things with or without the knowledge of any occupier of the premises: [*If space is insufficient, continue overleaf or attach a separate sheet.*],
- (c) to use any persons necessary to assist in the execution of the warrant,
- (d) to use such force as is reasonably necessary to enter the premises,
- (e) to break open any receptacle in or on the premises for the purposes of the search of the premises if it is reasonably necessary to do so,
- (f) to search any persons found in or on the premises who are reasonably suspected of having a thing mentioned in this warrant,
- (g) to arrest any persons found in or on the premises whom a police officer suspects on reasonable grounds of having committed an offence,
- (h) to seize, detain, remove from the premises or guard anything mentioned in this warrant and any other thing found by a police officer in the course of executing this warrant that the police officer believes on reasonable grounds is connected with any offence,
- (i) if the warrant is issued in relation to a child prostitution offence—to make in the premises inquiries relating to any such offence,
- (j) to disable any alarm, camera or surveillance device at the premises,
- (k) to pacify any guard dog at the premises,
- (l) to do anything that it is reasonably necessary to do for the purpose of preventing the loss or destruction of, or damage to, any thing connected with an offence that an executing officer believes on reasonable grounds to be at those premises, including by blocking any drains at or used in connection with the premises,
- (m) to impersonate another person for the purposes of executing the warrant,
- (n) to do anything that is reasonably necessary to do to render safe any dangerous article found in or on the premises,
- (o) to do anything else that is reasonable for the purpose of concealing anything done in the execution of the warrant from the occupier of the premises, including the following: [*Insert powers*],
- (p) to render safe any dangerous article found in or on the premises,
- (q) to operate electronic and other equipment brought to the premises or at the premises to examine a thing found at the premises,
- (r) to move a thing found at the premises to another place for examination in order to determine whether it is or contains a thing that may be seized,
- (s) to operate equipment at the premises to access data (including data held at premises other than the subject premises).

Issue details

The covert search warrant was granted by an eligible issuing officer under the *Law Enforcement (Powers and Responsibilities) Act 2002* on [*Date*] at [*Time*].

The warrant was issued on the application of [*Name and rank or position*] of [*Place of work*].

Basis for the issue of the warrant

The warrant was granted on the basis that the eligible issuing officer found that there were reasonable grounds for the issue of the warrant and, in particular:

- (a) that the applicant had reasonable grounds to suspect that there were on the premises the things listed above, which were things connected with the offence of: [*Specify offence.*]
- (b) that the applicant considered it necessary for the entry and search of the premises to be conducted without the knowledge of any occupier of the premises.

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

Challenging the issue of the warrant or the conduct of the search

If you are dissatisfied with the issue of the warrant or the conduct of the search, you should seek legal advice. This advice may assist you to decide whether your rights have been infringed and what action you can take. If your rights have been infringed you may be entitled to a legal remedy.

You should keep this notice as it will assist you if you seek advice.

Limitations on the powers conferred

The following limitations apply to the warrant:

- (a) the warrant must be executed before the date and time of the expiry given above,
- (b) any force used to enter the premises must be reasonably necessary,
- (c) nothing other than the things mentioned in the warrant can be seized unless it was found by a executing officer while executing the search and the officer believes on reasonable grounds that it is connected with any offence (not including a thing that may be moved to another place for examination in order to determine whether it is or contains a thing that may be seized).

Inspection

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at [*Insert the appropriate Supreme Court registry*]. You may seek to inspect those documents by arrangement with that registry. You should produce this notice at the registry when seeking to inspect those documents.

Signed [*Insert signature.*] [*In the case of a notice relating to a telephone search warrant, in circumstances where the warrant is issued but the notice is not furnished to the applicant (for example, because facsimile facilities are not available), the applicant officer is to complete this Form of notice in the terms dictated by the eligible issuing officer.*]

Date

Form 23 Adjoining occupier's notice for covert search warrant

(Clause 8)

(Law Enforcement (Powers and Responsibilities) Act 2002)

A covert search warrant has been issued by an eligible issuing officer. It gives the authority and power to an executing officer to enter and search the premises (the subject premises) at [*Address*], being a [*Description of premises (eg dwelling house)*].

The warrant was granted by an eligible issuing officer under the *Law Enforcement (Powers and Responsibilities) Act 2002* on [*Date*] at [*Time*].

The warrant was issued on the application of [*Name and rank or position*] of [*Place of work*].

The warrant also gives the authority to an executing officer to enter the following premises that adjoins or provides access to the subject premises without the knowledge of the occupier of the adjoining premises: [*Specify address or other description of adjoining premises.*]

Signed [*Insert signature of applicant.*]

Date

Form 24 Occupier's notice for criminal organisation search warrant

(Clause 7 (c))

(Law Enforcement (Powers and Responsibilities) Act 2002)

A search warrant has been issued by an eligible issuing officer. It gives the authority and power to the police to enter and search the premises at [*Address*], being a [*Description of premises (eg dwelling house)*].

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

Expiry

The search warrant will expire at [Time] on [Date] / expired on at [Time] on [Date] [Delete whichever is not applicable.]

Warnings

1. You have the right to inspect the search warrant, but you must not hinder or obstruct the search, as to do so may be a criminal offence. Under section 52 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, the maximum penalty for obstructing or hindering a search without reasonable excuse is a fine of \$11,000 or 2 years imprisonment (or both).

2. It is an offence under section 63 (1A) of the *Law Enforcement (Powers and Responsibilities) Act 2002* to give information in this notice knowing it is false or misleading in a material particular. The maximum penalty is a fine of \$11,000 or 2 years imprisonment (or both).

Powers given by the search warrant

This search warrant authorises police to use such force as is reasonably necessary to enter the premises and to carry out the purposes of the warrant.

The things the police are empowered to search for are: [If space is insufficient, continue overleaf or attach a separate sheet.]

The police can seize, detain, remove from the premises or guard any of the things mentioned in the warrant and anything that they find, while executing the search warrant, that is believed on reasonable grounds to be connected with any offence.

The police also have the power to:

- (a) break open any receptacle in or on the premises for the purposes of the search of the premises if it is reasonably necessary to do so, and
- (b) search any persons on the premises who are reasonably suspected of having a thing that is mentioned in the warrant, and
- (c) arrest any person who is reasonably suspected of committing an offence, and
- (d) if the warrant is issued in relation to a child prostitution offence—make inquiries relating to any such offence, and
- (e) disable any alarm, camera or surveillance device at the premises, and
- (f) pacify any guard dog at the premises, and
- (g) render safe any dangerous article found in or on the premises, and
- (h) operate electronic and other equipment brought to the premises or at the premises to examine a thing found at the premises, and
- (i) move a thing found at the premises to another place for examination in order to determine whether it is or contains a thing that may be seized, and
- (j) operate equipment at the premises to access data (including data held at premises other than the subject premises), and
- (k) do anything that it is reasonably necessary to do for the purpose of preventing the loss or destruction of, or damage to, any thing connected with an offence that the police believe on reasonable grounds to be at those premises, including by blocking any drains at or used in connection with the premises.

Issue details

The search warrant was granted by an eligible issuing officer under the *Law Enforcement (Powers and Responsibilities) Act 2002* on [Date] at [Time].

The warrant was issued on the application of [Name and rank] of [Place of work].

Basis for the issue of the warrant

The warrant was granted on the basis that the eligible issuing officer found that there were reasonable grounds for the issue of the warrant and, in particular, that the applicant had reasonable grounds to suspect that there were on the premises the things listed above, which were things connected with the offence: [Specify offence.]

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

Challenging the issue of the warrant or the conduct of the search

If you are dissatisfied with the issue of the warrant or the conduct of the search, you should seek legal advice. This advice may assist you to decide whether your rights have been infringed and what action you can take. If your rights have been infringed you may be entitled to a legal remedy.

You should keep this notice as it will assist you if you seek advice.

Limitations on the powers conferred

The following limitations apply to the warrant:

- (a) the warrant must be executed before the date and time of the expiry given above,
- (b) any force used to enter the premises must be reasonably necessary,
- (c) the warrant must be executed between 6 am and 9 pm unless the warrant states that it may be executed by day or night,
- (d) the warrant must be shown to you if you ask to see it,
- (e) nothing other than the things mentioned in the warrant can be seized unless it was found by a police officer while executing the search and the officer believes on reasonable grounds that it is connected with any offence (not including a thing that may be moved to another place for examination in order to determine whether it is or contains a thing that may be seized).

Inspection

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at [*Insert the appropriate Supreme Court registry.*] You may seek to inspect those documents by arrangement with that registry. You should produce this notice at the registry when seeking to inspect those documents.

Signed [*Insert signature.*] [*In the case of a notice relating to a telephone search warrant, in circumstances where the warrant is issued but the notice is not furnished to the applicant (for example, because facsimile facilities are not available), the applicant officer is to complete this Form of notice in the terms dictated by the eligible issuing officer.*]

Date

Form 25 Occupier's notice for search warrant other than Part 5 search warrant

(Clause 7 (d))

(Law Enforcement (Powers and Responsibilities) Act 2002)

A search warrant has been issued by an authorised officer. It gives the authority and power to the persons named in the search warrant to enter and search the premises at [*Address*], being a [*Description of premises (eg dwelling house)*].

Expiry

The search warrant will expire at [*Time*] on [*Date*].

Warning

You have the right to inspect the search warrant. [*If hindering or obstructing the persons executing the search warrant is an offence under the Act authorising the issue of the warrant, state so here and insert name of Act and section of Act under which it is an offence.*]

Powers given by the search warrant

The search warrant gives the power to the persons executing it to do the following things:

- (a) to use such force as is reasonably necessary to enter the premises,
- (b) to break open any receptacle in or on the premises for the purposes of the search of the premises if it is reasonably necessary to do so,
- (c) to search for/inspect the following things: [*List the items to be searched for.*],

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

- (d) to exercise the following powers: *[List the powers that are specified in the Act authorising the issue of a search warrant specifically required by the applicant.]*,
- (e) to exercise such other powers as are specified in *[Insert Act and section of Act under which the warrant was issued.]*. These powers include *[Describe main powers.]*

Issue details

The search warrant was granted by an authorised officer under *[Insert Act and section of Act under which the warrant was issued.]* on *[Date]* at *[Time]*.

The search warrant was issued on the application of *[Insert name, address, title and the organisation to which the applicant belongs.]*

Basis for the issue of the warrant

The warrant was granted on the basis that the authorised officer found that there were reasonable grounds for the issue of the warrant and, in particular, that the applicant had reasonable grounds to believe *[Insert in summary form the grounds on which the search warrant was issued.]*

Challenging the issue of the warrant or conduct of the search

If you are dissatisfied with the issue of the warrant or the conduct of the people executing the warrant, you should seek legal advice. This advice may assist you to decide whether your rights have been infringed and what action you can take. If your rights have been infringed you may be entitled to a legal remedy.

You should keep this notice as it will assist you if you seek advice.

Limitations on the powers conferred

The following limitations apply to the warrant:

- (a) the warrant must be executed before the date and time of the expiry given above,
- (b) any force used to enter premises must be reasonably necessary,
- (c) the warrant must be executed between 6 am and 9 pm unless the warrant states that it may be executed by day or night,
- (d) the warrant must be shown to you if you ask to see it,
- (e) only functions and powers authorised under the warrant or by the Act authorising the issue of the warrant may be performed.

Inspection

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at *[Insert the appropriate Local Court registry.]* You may seek to inspect those documents by arrangement with that registry. You should produce this notice at the registry when seeking to inspect those documents.

Signed *[Insert signature.]* *[In the case of a notice relating to a telephone search warrant, in circumstances where the warrant is issued but the notice is not furnished to the applicant (for example, because facsimile facilities are not available), the applicant officer is to complete this Form of notice in the terms dictated by the authorised officer.]*

Date

Form 26 Occupier's notice for crime scene warrant

(Clause 7 (e))

(Law Enforcement (Powers and Responsibilities) Act 2002)

A crime scene warrant has been issued by an authorised officer. It gives the authority and power to the police to enter the premises at *[Address]*, being a *[Description of premises (eg dwelling house)]*, and exercise all reasonably necessary crime scene powers in relation to *[Specify crime scene.]*

Expiry

The crime scene warrant will expire at *[Time]* on *[Date]*.

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

Warning

You have the right to inspect the warrant but you must not hinder or obstruct any police officer executing the warrant, as to do so may be a criminal offence. Under section 96 (1) of the *Law Enforcement (Powers and Responsibilities) Act 2002*, the maximum penalty for obstructing or hindering, without reasonable excuse, a person acting under a warrant is a fine of \$11,000 or 2 years imprisonment (or both).

Further, you must not fail or refuse to comply with a request made or direction given by a police officer exercising crime scene powers at the crime scene as to do so may also be a criminal offence. Under section 96 (2) of the *Law Enforcement (Powers and Responsibilities) Act 2002*, the maximum penalty for failing or refusing, without reasonable excuse, to comply with a request made or direction given by a police officer exercising such powers under this warrant is a fine of \$1,100.

Powers given by the warrant

The police have the following powers:

- (a) to enter the named premises, using such force as is reasonably necessary for that purpose,
- (b) to use any persons necessary to assist in the execution of this warrant,
- (c) to exercise any lawful power to arrest a person,
- (d) to direct a person to leave the crime scene or remove a vehicle, vessel or aircraft from the crime scene,
- (e) to remove from the crime scene a person who fails to comply with a direction to leave the crime scene or a vehicle, vessel or aircraft a person fails to remove from the crime scene,
- (f) to direct a person not to enter the crime scene,
- (g) to prevent a person from entering the crime scene,
- (h) to prevent a person from removing evidence from or otherwise interfering with the crime scene or anything in it and, for that purpose, detain and search the person,
- (i) to remove or cause to be removed an obstruction from the crime scene,
- (j) to perform any necessary investigation, including, for example, search the crime scene and inspect anything in it to obtain evidence of the commission of an offence,
- (k) for the purpose of performing any necessary investigation, to conduct any examination or process,
 - (l) to open anything at the crime scene that is locked,
- (m) to take electricity, gas or any other utility, for use at the crime scene,
- (n) to direct the occupier of the premises or a person apparently involved in the management or control of the premises to maintain a continuous supply of electricity at the premises,
- (o) to photograph or otherwise record the crime scene and anything in it,
- (p) to seize, detain, remove from the crime scene or guard all or part of a thing that might provide evidence of the commission of an offence,
- (q) to dig up anything at the crime scene,
- (r) to remove wall or ceiling linings or floors of a building, or panels of a vehicle,
- (s) to exercise any other power reasonably necessary or incidental to a power listed in paragraphs (e)–(s),
- (t) to stay on the premises for the purpose of exercising the powers set out in paragraphs (d)–(s).

Issue details

The warrant was granted by an authorised officer under the *Law Enforcement (Powers and Responsibilities) Act 2002* on [Date] at [Time].

The warrant was issued on the application of [Name and rank] of [Place of work].

Basis for the issue of the warrant

The warrant was granted on the basis that the authorised officer found that there were reasonable grounds for the issue of the warrant and, in particular, that the applicant police officer had reasonable grounds to

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

suspect that it was necessary to exercise crime scene powers at a crime scene for the purpose of preserving, or searching for and gathering, evidence of the commission of:

- (a) *the offence of [*Specify offence.*], which is a serious indictable offence,
- (b) *the offence of [*Specify offence.*] that is being/was/may have been* committed in connection with a traffic accident that has resulted in the death of/serious injury to* a person.

[* *Delete if inapplicable.*]

Challenging the issue or execution of the warrant

If you are dissatisfied with the issue or the execution of the warrant, you should seek legal advice. This advice may assist you to decide whether your rights have been infringed and what action you can take. If your rights have been infringed you may be entitled to a legal remedy.

You should keep this notice as it will assist you if you seek advice.

Limitations on the powers conferred

The following limitations apply to the warrant:

- (a) the warrant must be executed before the date and time of the expiry given above,
- (b) any force used to enter the premises must be reasonably necessary,
- (c) the warrant must be executed between 6 am and 9 pm unless the warrant states that it may be executed by day or night,
- (d) the warrant must be shown to you if you ask to see it,
- (e) the powers listed in paragraphs (d)–(s) under the heading “**Powers given by the warrant**” may be exercised only if it is reasonably necessary to do so.

Inspection

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at [*Insert the appropriate Local Court registry*]. You may seek to inspect those documents by arrangement with that registry. You should produce this notice at the registry when seeking to inspect those documents.

Signed [*Insert signature.*] [*In the case of a notice relating to a telephone crime scene warrant, in circumstances where the warrant is issued but the notice is not furnished to the applicant (for example, because facsimile facilities are not available), the applicant officer is to complete this Form of notice in the terms dictated by the authorised officer.*]

Date

Form 27 Report to eligible issuing officer about execution of warrant (other than covert search warrant)

(Clause 10 (1))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Note. This report must be made within 10 days after the execution of the warrant or the expiry of the warrant, whichever first occurs.

This report is made to the eligible issuing officer who issued the attached warrant. [*Unless completed on the back of the warrant, attach the original warrant issued by the eligible issuing officer or telephone warrant completed by the applicant.*]

- *1 The warrant was not executed for the following reasons:
- *2 The warrant was executed on [*Date*].
- *3 [*To be completed unless 4 applies.*] The warrant was executed at [*Specify time at which execution of warrant was completed.*]
- *4 [*To be completed if the warrant authorised the use of a dog for general drug detection.*] The warrant was executed during the period/periods* of [*Specify period/periods.*]
- *5 The result of the execution of the warrant (including a description of the things seized) is briefly as follows: [*If a receipt is given for anything seized, attach a copy.*]

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

*6 The things seized are now in the custody of [*Specify the person who has responsibility for the safekeeping of the things seized. Specify the place where the things are held unless specifying the place where they are held would adversely affect the security of the things seized.*]

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

[* *Delete if inapplicable.*]

Signed [*Print name and insert signature.*]

Date

Rank or designation

Place of work

Date of receipt of report by eligible issuing officer

Eligible issuing officer [*Print name and insert signature.*]

Note. On completion of the report, forward the report and attachments to the Local Court registry or the Supreme Court registry named in the Occupier's Notice.

Form 28 Report to eligible issuing officer about execution of covert search warrant

(Clause 11 (1))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Note. This report must be made within 10 days after the execution of the covert search warrant or the expiry of the warrant, whichever first occurs.

This report is made to the eligible issuing officer who issued the attached warrant. [*Unless completed on the back of the warrant, attach the original warrant issued by the eligible issuing officer or telephone warrant completed by the applicant.*]

*1 The warrant was not executed for the following reasons:

*2 The warrant was executed at [*Specify the address or other description of the subject premises.*]

*3 The warrant was executed on [*Date*].

*4 The warrant was executed at [*Specify time at which execution of warrant was completed.*]

*5 The person in charge when the warrant was executed was [*Specify name or code-name.*]

*6 The persons who entered the subject premises to assist in the execution of the warrant were, and the nature of the assistance provided was as follows: [*Specify name(s) or code-name(s) and nature of assistance in relation to each person.*]

*7 The following powers were exercised under the warrant: [*Specify powers.*]

*8 The result of the execution of the warrant (including a description of the things seized, placed in substitution for a seized thing or examined and any data accessed under section 75B of the *Law Enforcement (Powers and Responsibilities) Act 2002*) is briefly as follows: [*If a receipt is given for anything seized, attach a copy.*]

*9 The things seized are now in the custody of [*Specify the person who has responsibility for the safekeeping of the things seized. Specify the place where the things are held unless specifying the place where they are held would adversely affect the security of the things seized.*]

[* *Delete if inapplicable.*]

Signed [*Print name and insert signature.*]

Date

Rank or position

Place of work

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

Date of receipt of report by eligible issuing officer

Eligible issuing officer [*Print name and insert signature.*]

Note. On completion of the report, forward the report and attachments to the Supreme Court registry named in the Occupier's Notice.

Form 29 Report to eligible issuing officer about return or retrieval of thing following execution of covert search warrant

(Clause 11 (2))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Note. This report must be made within 10 days after the entry to the premises the subject of a covert search warrant for the purposes of retrieving or returning a thing under section 49A of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

This report is made to the eligible issuing officer who issued the attached warrant. [*Unless completed on the back of the warrant, attach the original warrant issued by the eligible issuing officer or telephone warrant completed by the applicant.*]

- *1 The warrant was executed at [*Specify the address or other description of the subject premises.*]
- *2 The warrant was executed on [*Date*].
- *3 The subject premises were re-entered on [*Date*].
- *4 The thing was not returned or retrieved for the following reasons:
- *5 The thing returned or retrieved was: [*Set out a brief description of thing.*]
- *6 The persons who entered the premises for the purposes of the return or retrieval of the thing are [*Specify names or code-names.*]
- *7 The persons who entered the premises to assist in the return or retrieval of the thing are, and the nature of the assistance provided was, as follows: [*Specify names or code-names and nature of assistance in relation to each person.*]

[* *Delete if inapplicable.*]

Signed [*Print name and insert signature.*]

Date

Rank or position

Place of work

Date of receipt of report by eligible issuing officer

Eligible issuing officer [*Print name and insert signature.*]

Note. On completion of the report, forward the report and attachments to the Supreme Court registry named in the Occupier's Notice.

Form 30 Report to eligible issuing officer about notice to produce documents

(Clause 10 (2))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Note. This report must be made within 10 days after the giving of the notice to produce documents to the authorised deposit-taking institution concerned or the expiry of the notice, whichever first occurs.

This report is made to the eligible issuing officer who issued the attached notice to produce documents. [*Unless completed on the back of the notice, attach the original notice issued by the eligible issuing officer or telephone notice completed by the applicant.*]

- *1 The notice was not given for the following reasons:
- *2 The notice was given on [*Date*] at [*Time*].

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

- *3 The result of the giving of the notice (including a description of the documents produced) is briefly as follows: *[If a receipt is given for anything produced, attach a copy.]*
- *4 The documents are now in the custody of *[Specify the person who has responsibility for the safekeeping of the documents produced. Specify the place where the documents are held unless specifying the place where they are held would adversely affect the security of the documents.]*
- [* Delete if inapplicable.]*

Signed *[Print name and insert signature.]*

Date

Rank or designation

Place of work

Date of receipt of report by eligible issuing officer

Eligible issuing officer *[Print name and insert signature.]*

Note. On completion of the report, forward the report and attachments to the Local Court registry at which the notice was issued or nearest to the place at which it was issued.

Form 31 Summary of Part 9 of Act for detained persons

(Clause 19 (a))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Summary of Part 9 of the Law Enforcement (Powers and Responsibilities) Act 2002 for detained persons

My name is:

I am your custody manager while you are at: *[Insert name of police station or other place.]*

If you have any concerns about your treatment here you should inform me.

1. This form tells you about your rights when you are in police custody here.
2. If you cannot speak English, I will get an interpreter to help you and the investigating police will wait until the interpreter gets here.

Caution

3. While in police custody, you do not have to say or do anything, but anything you say or do may be used in evidence. Do you understand that?
4. There are some exceptions to this right not to say or do anything. If one of these exceptions applies to you, police will tell you that you are required to answer questions or do something, and will explain the particular law that requires you to answer questions or do something.

Time in custody

5. The investigating police can keep you in their custody for up to 6 hours while they conduct their investigations. However, there are times that do not count towards the 6 hour investigation period. The times that do not count are listed on the back of this form. If the police want to keep you longer than 6 hours they must apply to a magistrate or other authorised officer. If this happens you or your lawyer can talk to the magistrate or authorised officer about whether the extension of time should be granted. If an extension is granted you will be given a copy of the document that authorises that.

Contacting a lawyer, friend, relative, guardian, independent person or consular official

6. I will help you speak to a lawyer of your choice if you want legal advice, or if you want to ask the lawyer to come here. I will let you do this without being overheard, if I can. If your lawyer comes here, I will allow you to speak to the lawyer in private. Your lawyer may be present during any investigative procedure you participate in, such as an interview or identification parade, and give you advice.
7. I will also help you speak to a friend, relative, guardian or independent person so you can tell them where you are. I will let you do this without being overheard, if I can. You may also ask them to

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

- come here. If the person comes here, I will let you speak to that person in private. However, I do not have to allow you to speak to the person in private if doing so would be unsafe or would interfere with the investigation.
8. If you are not an Australian citizen I will help you speak to a consular official. You may ask the consular official to come here. I will let you do this without being overheard, if I can. If the consular official comes here, I will allow you to speak to the official in private.
 9. The investigating police cannot ask you to do or say anything while you contact your lawyer, friend, relative, guardian, independent person or consular official, and wait for them to come here. However, as explained earlier, there are exceptions to this right not to say or do anything.
 10. The investigating police do not have to wait for more than 2 hours for the person you have contacted to come here.
 11. However, if I believe that someone's safety is at risk, I do not have to delay the investigation to allow you to contact, or attempt to contact, a friend, relative, guardian or independent person, wait for that person to arrive here, or let you speak to the person once they have arrived.
 12. There are also some circumstances in which I do not have to let you communicate with, or attempt to communicate with a friend, relative, guardian or independent person at all.
 13. If you are under 18, an Aboriginal person or Torres Strait Islander, someone with a disability (whether physical, intellectual or some other disability), or someone from a non-English speaking background, you have other rights and there are other things I will do to help you while you are here. If you are such a person you should inform me and I will tell you more about those rights and what I will do to help you.

Other rights

14. I will immediately arrange for you to get medical attention if I think it is necessary, or if you request medical treatment for reasons that appear reasonable. You have the right to reasonable refreshments and reasonable access to a toilet. You have the right to facilities to wash, shower, bathe or shave if I am satisfied that this will not interfere with the investigation.
15. I will tell you if a person claiming to be your friend, relative or guardian asks for information about where you are. I will tell that person where you are unless you do not agree, or I do not believe the person asking for information is who they claim to be. There are some other circumstances in which I do not have to tell the person where you are.
16. I will also tell you if a person claiming to be your lawyer, a consular official from your country, or a professional person concerned with your welfare, asks for information about where you are. I will tell that person where you are unless you do not agree, or I do not believe the person asking for the information is who they claim to be.

Record

17. I will keep a record of your time in custody. I will let you look at the record if I reasonably can. I will give you a copy of the record when you are released or taken to court.

Acknowledgment

Custody Manager: At [Time] on [Date],

I informed the detained person of the information contained on the front of this form entitled "Summary of Part 9 of the *Law Enforcement (Powers and Responsibilities) Act 2002* for detained persons", by reading it to him/her* and by giving him/her* a copy of this form.

Custody Manager [*print name, rank and date and insert signature.*]

Detained person: The information in this form has been read to me. I have also been given a copy of the form entitled "Summary of Part 9 of *Law Enforcement (Powers & Responsibilities) Act 2002* for detained persons". I understand the information that I have been given.

Detained person [*print name and insert signature.*]

Note. You do not have to sign this form.

*Name of detained person:

The detained person declined to sign the above acknowledgement. He/she said:

*Custody Manager [*print name, rank and date and insert signature.*]

[* *Delete if inapplicable.*]

The following times do not count towards the 6 hour investigation time:

- time taken to bring you from where you were arrested to a place where facilities are available to carry out investigative procedures (for example, an interview),
- waiting for the arrival of police officers whose knowledge or skills are needed for the investigation,
- waiting for facilities to tape record an interview,
- communicating with, waiting for, and consulting with a friend, relative, guardian, independent person, lawyer or consular official,
- arranging for and receiving medical treatment,
- arranging and waiting for an interpreter,
- arranging and conducting an identification parade,
- resting, receiving refreshments or using toilet and other bathroom facilities,
- recovering from the effects of alcohol or drugs,
- applying for a detention warrant (to keep you in custody for more than 6 hours), search warrant or crime scene warrant relating to the investigation,
- any time taken to carry out charging procedures,
- carrying out a forensic procedure or applying for an order to carry out such a procedure.

Note. A reference in this form to a custody manager includes a reference to a police officer who is exercising the functions of a custody manager at premises being searched under a search warrant.

Form 32 Summary of Part 9 of Act for protected suspects

(Clause 19 (b))

(Law Enforcement (Powers and Responsibilities) Act 2002)

Summary of Part 9 of the Law Enforcement (Powers and Responsibilities) Act 2002 for protected suspects

My name is:

I am your custody manager while you are at: *[Insert name of police station or other place.]*

If you have any concerns about your treatment here you should inform me.

You are not under arrest and are free to leave at any time

1. This form tells you about your rights when you are with police here.
2. If you cannot speak English, I will get an interpreter to help you and the investigating police will wait until the interpreter gets here.

Caution

3. While you are with police, you do not have to say or do anything, but anything you say or do may be used in evidence. Do you understand that?
4. There are some exceptions to this right not to say or do anything. If one of these exceptions applies to you, police will tell you that you are required to answer questions or do something, and will explain the particular law that requires you to answer questions or do something.

Contacting a lawyer, friend, relative, guardian, independent person or consular official

5. I will help you speak to a lawyer of your choice if you want legal advice, or if you want to ask the lawyer to come here. I will let you do this without being overheard, if I can. If your lawyer comes here, I will allow you to speak to the lawyer in private. Your lawyer may be present during any investigative procedure you participate in, such as an interview or identification parade, and give you advice.
6. I will also help you speak to a friend, relative, guardian or independent person so you can tell them where you are. I will let you do this without being overheard, if I can. You may also ask them to come here. If the person comes here, I will let you speak to that person in private. However, I do not

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

have to allow you to speak to the person in private if doing so would be unsafe or would interfere with the investigation.

7. If you are not an Australian citizen I will help you speak to a consular official. You may ask the consular official to come here. I will let you do this without being overheard, if I can. If the consular official comes here, I will allow you to speak to the official in private.
8. The investigating police cannot ask you to do or say anything while you contact your lawyer, friend, relative, guardian, independent person or consular official, and wait for them to come here. However, as explained earlier, there are exceptions to this right not to say or do anything.
9. The investigating police do not have to wait for more than 2 hours for the person you have contacted to come here.
10. However, if I think that someone's safety is at risk, I do not have to delay the investigation to allow you to contact a friend, relative, guardian or independent person, wait for that person to arrive here, or let you speak to the person once they have arrived.
11. There are also some circumstances in which I do not have to let you communicate with, or attempt to communicate with, a friend, relative, guardian or independent person at all.
12. If you are under 18, an Aboriginal person or Torres Strait Islander, someone with a disability (whether physical, intellectual or some other disability) or someone from a non-English speaking background, you have other rights and there are other things I will do to help you while you are here. If you are such a person you should inform me and I will tell you more about those rights and what I will do to help you.

Other rights

13. I will immediately arrange for you to get medical attention if I think it is necessary, or if you request medical treatment for reasons that appear reasonable. You have the right to reasonable refreshments and reasonable access to a toilet. You have the right to facilities to wash, shower, bathe or shave if I am satisfied that this will not interfere with the investigation.
14. I will tell you if a person claiming to be your friend, relative or guardian asks for information about where you are. I will tell that person where you are unless you do not agree, or I do not believe the person asking for information is who they claim to be. There are some other circumstances in which I do not have to tell the person where you are.
15. I will also tell you if a person claiming to be your lawyer, a consular official from your country, or a professional person concerned with your welfare, asks for information about where you are. I will tell that person where you are unless you do not agree, or I do not believe the person asking for the information is who they claim to be.

Record

16. I will keep a record of your time here. I will let you look at the record if I reasonably can. I will give you a copy of the record when you leave.

Acknowledgment

Custody Manager: At [Time] on [Date],

I informed the protected suspect of the information contained on the front of this form entitled "Summary of Part 9 of the *Law Enforcement (Powers and Responsibilities) Act 2002* for protected suspects", by reading it to him/her* and by giving him/her* a copy of this form.

Custody Manager [*print name, rank and date and insert signature.*]

Protected suspect: The information in this form has been read to me. I have also been given a copy of the form entitled "Summary of Part 9 of *Law Enforcement (Powers & Responsibilities) Act 2002* for protected suspects". I understand the information that I have been given.

Person in company of police [*print name and insert signature.*]

Note. You do not have to sign this form.

*Name of protected suspect:

The protected suspect declined to sign the above acknowledgement. He/she said:

public consultation draft

Law Enforcement (Powers and Responsibilities) Regulation 2016 [NSW]
Schedule 1 Forms

*Custody Manager [*print name, rank and date and insert signature.*]

[* *Delete if inapplicable.*]

Note. A reference in this form to a custody manager includes a reference to a police officer who is exercising the functions of a custody manager at premises being searched under a search warrant.

Schedule 2 Guidelines for custody managers and other police officers

(Clause 21)

Part 1 Specific guidelines for custody managers

1 Questioning detained person or protected suspect

The custody manager for a detained person or protected suspect should not put specific questions to the person regarding the person's involvement in any offence.

2 Detained person or protected suspect's property

The custody manager for a detained person or protected suspect should ascertain what property the person has with him or her when the person comes to the police station or other place of detention concerned, or had taken from him or her on arrest, and should arrange for safekeeping of the property if it remains at the police station or other place of detention.

3 Vulnerable persons—consideration of whether a detained person or protected suspect has certain kind of impaired intellectual functioning

In considering whether a detained person or protected suspect has a total or partial loss of his or her mental functions, or a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction, the custody manager for the detained person or protected suspect should have regard to whether the person appears:

- (a) to have difficulty understanding questions and instructions, or
- (b) to respond inappropriately or inconsistently to questions, or
- (c) to have a short attention span, or
- (d) to receive a disability support pension, or
- (e) to reside at a group home or institution, or be employed at a sheltered workshop, or
- (f) to be undertaking education, or to have been educated at a special school or in special education classes at a mainstream school, or
- (g) to have an inability to understand a caution given to the person under section 122 of the Act.

Part 2 Placing of certain vulnerable persons in cells

4 Aboriginal persons and Torres Strait Islanders (adults)

If an Aboriginal person or Torres Strait Islander who is not a child is placed in a police cell:

- (a) wherever possible, that person should be accommodated with another Aboriginal person or Torres Strait Islander who is not a child, and
- (b) the person should not be placed alone in the cell unless there is no reasonably practicable alternative.

5 Aboriginal persons and Torres Strait Islanders (children)

- (1) An Aboriginal person or Torres Strait Islander who is a child should not be placed in a police cell except in exceptional circumstances that make it necessary for the well-being of the child.

- (2) If it is necessary to detain such a child overnight in a police cell, the custody manager for the child should arrange for a support person to remain with the child unless it is not reasonably practicable to do so.

6 Children other than Aboriginal or Torres Strait Islander children

- (1) This clause applies to a child who is not an Aboriginal person or Torres Strait Islander.
- (2) A child to whom this clause applies should not be placed in a cell unless:
 - (a) no other secure accommodation is available and the custody manager for the child considers that it is not practicable to supervise the child if the child is not placed in a cell, or
 - (b) the custody manager considers that a cell provides more comfortable accommodation than other secure accommodation in the police station.
- (3) Such a child should not be placed in a cell with a detained person or protected suspect who is not a child except in exceptional circumstances that make it necessary for the well-being of the child.

Part 3 Miscellaneous

7 Use of restraints in cells

If a detained person or protected suspect is placed in a locked police cell, no additional restraint should be used within the cell unless absolutely necessary.

8 Use of interpreters

- (1) A police officer should bear in mind that a person with some ability in conversational English may still require an interpreter in order to ensure that the person understands his or her legal rights.
- (2) A qualified interpreter should be preferred over a person who speaks the detained person's or protected suspect's language but is not a qualified interpreter. A qualified interpreter is one who is accredited to professional level by the National Accreditation Authority for Translators and Interpreters in the language concerned.
- (3) An interpreter should not be used as a support person.

Schedule 3 Code of Practice for directions under Part 14 of Act

(Clause 50)

1 Purpose

- (1) A police officer has the power to give directions to a person or group of people for the purpose of putting an end to certain conduct in a public place.
- (2) This Code of Practice provides police officers with guidance relating to the exercise of these powers and the rights of persons to whom directions are given.
- (3) This Code of Practice has been prescribed for the purposes of section 200A of the *Law Enforcement (Powers and Responsibilities) Act 2002 (the Act)*.

2 Details

- (1) Police officers may give directions to a person or group of people in a public place where they believe, on reasonable grounds, that the person's behaviour or presence or behaviour due to intoxication, constitutes certain prescribed conduct as outlined in Part 14 of the Act.
- (2) Police officers may issue the following two types of directions.
- (3) **Directions relating to public places**

Police officers may give a direction to a person or group of people for the purpose of putting an end to certain conduct in public places. The conduct may be the person's behaviour or presence in a public place. The circumstances in which such a direction can be given are set out in section 197 of the Act. The direction must be reasonable in the circumstances for the purpose of putting an end to the conduct. If a direction given by a police officer includes a specified period of time or location that a person must move away or end their conduct, this timeframe or location should be reasonable in the circumstances.
- (4) The direction may, but does not have to, involve a person moving on from a particular place. In many cases, it may be appropriate to give a direction aimed at putting an end to conduct, rather than simply moving the person elsewhere. A direction must be reasonable in the circumstances for the purpose of reducing or eliminating the conduct.
- (5) Where the person's presence constitutes the relevant conduct, it is likely the direction will be a direction to move on. For example, a group of people blocking the entrance to a shop by sitting in the doorway are, by their presence, obstructing other people. In exercising these powers, police officers should also be aware that a person's age, gender, racial appearance or antecedents cannot form the basis of a direction in the absence of other factors.
- (6) **Move-on directions to intoxicated persons in public places**

Police officers may give a direction to an intoxicated person to move on from a public place in circumstances prescribed in section 198 of the Act.
- (7) In exercising this power, police officers are reminded of the additional requirement to warn a person that it is an offence to be intoxicated and disorderly in that or any other public place at any time within 6 hours after the direction is given.
- (8) For the purposes of section 198 of the Act, a person is intoxicated if:
 - (a) the person's speech, balance, co-ordination or behaviour is noticeably affected, and

- (b) it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of alcohol or any drug.

3 Offence provisions

- (1) In accordance with section 199 of the Act, it is an offence for a person to refuse or fail to comply with a direction given by a police officer without a reasonable excuse. A failure to do so can result in a fine up to \$220.
- (2) Further to this, failure to comply with a move-on direction for being intoxicated and disorderly is an offence under section 9 of the *Summary Offences Act 1988* and can result in a court imposed fine of up to \$1650.

4 Limitation on the exercise of powers under Part 14—section 200

A police officer cannot give a direction under Part 14 of the Act in relation to an industrial dispute, protests, processions or organised assemblies.

5 Safeguards

- (1) When giving a direction under sections 197 and 198 of the Act, police officers must comply with the safeguard requirements set out in Part 15 of the Act.
- (2) In addition, when a police officer gives a direction under section 198 of the Act (being a direction on the grounds that the person is intoxicated and disorderly in a public place), the officer must warn the person that it is an offence to be intoxicated and disorderly in that or any other public place at any time within 6 hours after the direction is given. This warning is in addition to any warning required under Part 15 of the Act.
- (3) Police officers are also encouraged to consider the other relevant legislation and the *NSW Police Force Code of Conduct and Ethics* in determining what action is appropriate. Finally, a police response may be guided by NSW Police Force operational policies and procedures and the *NSW Police Force Handbook*.

6 Definitions

Expressions defined in the Act have the same meaning for this Code of Practice.