



Review of the Police Powers  
(Drug Premises) Act 2001

January 2005

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# Preface

The Police Powers (Drug Premises) Act 2001 (the Drug Premises Act) commenced on 1 July 2001.

The Act confers new powers on police in relation to drug premises. It also amends the Summary Offences Act 1988 (the Summary Offences Act) by extending police powers to issue 'reasonable directions' to persons suspected of buying or selling prohibited drugs.

Section 21 of the Act required that the NSW Ombudsman review the operation of the legislation for two years from the date of commencement, and to report to the Minister of Police at the conclusion of that period.

The main body of this report is divided into three parts. The first part is a background, and provides some introductory information about NSW Police, a description of our methodology and outlines relevant legislation.

The second part discusses the provisions of the Act which relate to the drug premises. The third part discusses the provisions of the Act which relate to reasonable directions or "move-ons".

Where appropriate, recommendations have been made following the relevant discussion throughout each chapter. A summary of recommendations is presented at the beginning of the report.

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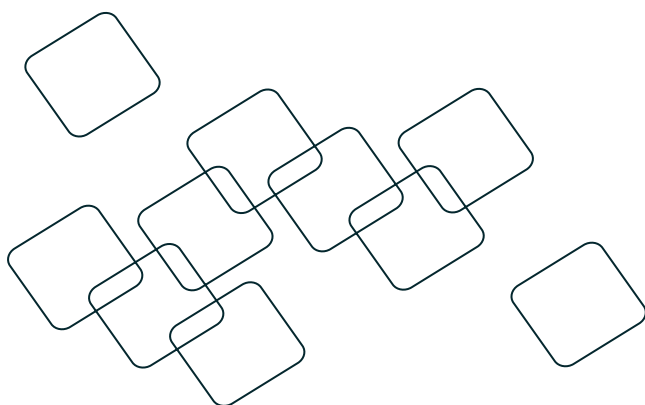
We also acknowledge the many organisations and individuals who made contributing submissions to our review. See Appendix E for a full list of submissions.

# Summary of Recommendations

	Recommendation	Report reference paragraph
1	That Parliament consider replacing the requirement in the Drug Premises Act that sergeants apply for drug premises search warrants and instead require that a police officer in charge of an investigation into a suspected drug premises apply for a search warrant.	4.3
2	That Parliament consider the inclusion of “evidence of people coming and going” as an indicator that may be used to define drug premises in the Act.	5.2
3	That consideration be given to the amendment of the statutory defence in section 12 of the Act, to better reflect the circumstances and/or state of mind which a person must prove to make out an adequate defence for being found on, entering or leaving drug premises.	6.10
4	That NSW Police develop definitions of what constitutes various “levels” of drug supply to practically assist them to develop more targeted drug law enforcement initiatives.	8.7
5	That these definitions be incorporated into the process for evaluating NSW Police performance in relation to drug law enforcement, the “Illicit Drug Law Enforcement Performance Indicators”.	8.7
6	That NSW Police incorporate in its guidelines and training materials advice to officers in relation to responsible and appropriate time periods to enforce a direction.	11.11
7	That ‘seven day’ directions be issued in exceptional circumstances only and not when the issue of such directions would compromise access to health or other services used by the subject of the direction.	11.11
8	That arrest and charge for disobeying a direction should only be used as a last resort.	11.13
9	That the revised guidelines on policing in the vicinity of Needle and Syringe Exchange Outlets be finalised, and be made available on the NSW Police Intranet, as soon as is practicable.	11.15
10	That training on the guidelines relating to policing in the vicinity of Needle and Syringe Exchanges be incorporated into the curriculum for students at the Police College and reinforced at commands in which Needle and Syringe Exchange Programs (NSPs) operate.	11.15
11	That NSW Police include appropriate guidelines dealing with places other than NSPs, including chemists, in their review of guidelines on policing in the vicinity of NSPs.	11.16
12	That programs and strategies that are directed toward improving the relationship between young people and police in Cabramatta continue to be implemented.	11.18
13	That NSW Police take steps, including appropriate training, to ensure police officers adhere to the NSW Government Protocol for Homeless People. To the extent, in any community, NSW Police does not propose officers adhere to this policy, appropriate consultations on any different approach should be completed before a different protocol is implemented.	11.18
14	That a working party be convened to discuss the form and content of new legislative provisions that enable police to issue directions to people who are involved in the street-level drug trade. This working party should include appropriate representatives from NSW Police, health providers, drug user advocacy groups and legal service providers.	11.21
15	That the working party also consider appropriate forms of consultation between NSW Police and health agencies that could be put in place if intensive and sustained policing strategies aimed at moving on drug users are to be implemented elsewhere in the future.	11.21
16	If the drug move-on powers are to remain in their current form, there is a clear need for specific training on the use of drug move-ons, and the development of Standard Operating Procedures, to assist police to implement these powers in an appropriate and lawful manner.	11.21



# Part One. Background.



## Chapter 1. Introduction

This chapter outlines the background to the introduction of the Drug Premises Act. First, the structure of NSW Police is outlined, including specialist units within NSW Police that are pertinent to this review.

### 1.1. Structure of NSW Police

NSW Police is comprised of 80 Local Area Commands (LACs). LACs are the primary management unit of NSW Police. Since 1 July 2002, each of these LACs have been located within the geographic boundaries of five regions. These are:

- Greater Metropolitan Region
- Inner Metropolitan Region
- Northern Region
- Southern Region and
- Western Region.

The Greater and Inner Metropolitan Regions encompass the Sydney metropolis, and the remaining three regions cover the northern, southern and western parts of NSW.

NSW Police also has specialist units that are involved in drug law enforcement that are relevant to this review:

- Target Action Groups (TAGs) are specialised units that address specific crime issues that affect a local area. In some areas, TAGs were involved in the use of the Drug Premises Act to deal with drug premises.
- The State Crime Command Drug Squad takes on the more complex and serious cases in drug law enforcement. The Drug Squad is also involved in providing strategic direction on drug policy, and provides support and assistance in drug investigations at the LAC Level.
- The Chemical Operations Unit is a division within the Drug Squad that is responsible for all investigations involving clandestine laboratories.
- Court and Legal Services provides expert legal advice and criminal advocacy for summary prosecutions.

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## 1.2. Background to the emergence of the Drug Premises Act

### 1.2.1. Cabramatta and the street-level drug trade

The Drug Premises Act had its genesis in the complex and often highly charged debate on drug law enforcement and policing in the Sydney suburb of Cabramatta. Although the law applies State-wide, drug house legislation was primarily introduced to address the law enforcement issues that had emerged in policing the illicit drug market in Cabramatta. Prior to setting out our research findings for this review, it is worthwhile briefly outlining the background to the introduction of this legislation.

In the 1990s, heroin use generated considerable public concern in NSW. Cabramatta, in south-western Sydney, became well-known as a major nexus for the street-level distribution of heroin.<sup>3</sup> This was, in part, because of the emergence of a visible street-level drug trade, particularly around Cabramatta Railway Station. By the late 1990s, the suburb had been dubbed the “heroin capital” of Australia. At a local level and beyond, Cabramatta’s street-level drug trade became the subject of media attention and public debate. Cabramatta is also one of Sydney’s most ethnically diverse suburbs, and has a large South East Asian community. Since the mid 1990s, the involvement of some young Vietnamese in a visible, street-level drug trade has also been a focus of media attention.<sup>4</sup>

As part of the discussion on the drug trade in Cabramatta, questions were raised about how the drug trade was, and could be, effectively policed. As a consequence, aspects of drug law enforcement in Cabramatta came under close public scrutiny. In June 2000, a Legislative Council Committee began an inquiry into policing in Cabramatta.<sup>5</sup> Central to this inquiry was the question of whether adequate resources had been allocated to drug law enforcement.<sup>6</sup>

Since the 1990s, several strategies have been adopted in an attempt to deal with the illicit drug trade in Cabramatta. These have included undercover drug buy/busts and the use of Close Circuit Television (CCTV) cameras, positioned at key vantage points in the suburb’s Central Business District (CBD), as a policing tool.<sup>7</sup> But probably the most significant policing strategy to be implemented was the use of intensive street policing operations. In July 1997, Operation Puccini was launched. This was a major policing initiative targeted at the street-level drug trade and ran for several years.<sup>8</sup>

Central to the strategy police adopted in Puccini was maintaining a constant and overt uniformed police presence in public areas where street-level dealing was believed to be prevalent. Puccini’s aim was to eradicate the most visible aspects of the drug trade and to have broader effects such as discouraging drug users from coming to the suburb to score. The operation also aimed to reduce drug related crime, such as burglary and theft, in Cabramatta.

While Operation Puccini appears to have reduced the incidence of drug dealing in the Cabramatta CBD since its inception<sup>9</sup>, it may have had countervailing effects on the illicit drug market, such as the displacement of the drug market into surrounding areas.<sup>10</sup> Notwithstanding the operation’s apparent success in reducing drug dealing in public places, the illicit drug market in Cabramatta has been able to survive. Illicit drug markets have been known for their ability to adapt to the strategies put in place to police them.<sup>11</sup> Some researchers have attributed this to the nature of drug offending itself:

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<sup>3</sup> For a discussion of possible reasons for this, see NSW Legislative Council, Cabramatta Policing, General Purpose Standing Committee No. 3 Report on Inquiry into Cabramatta Policing, 2001, pp 11-13.

<sup>4</sup> David Dixon and Lisa Maher, “Anh Hai: policing, culture and social exclusion in a street heroin market”, Policing and Society, 2002, Vol. 12, No. 2, pp. 93-110.

<sup>5</sup> The NSW Legislative Council General Purpose Standing Committee No. 3 conducted the inquiry. Their report, entitled, “Cabramatta Policing”, was published in July 2001.

<sup>6</sup> The other two terms of reference of the inquiry into policing in Cabramatta were to determine whether the “Crimes Index” had an impact on policing in the suburb and to assess the ability of the LAC to meet the needs of non-English speaking residents.

<sup>7</sup> Police Interview 1, 28 June 2002. For further discussion of policing strategies used in Cabramatta, see Lisa Maher, David Dixon, Michael Lynskey and Wayne Hall, *Running the Risks: Heroin, Health and Harm in South West Sydney*, National Drug and Alcohol Research Centre Monograph No. 38, University of NSW, Sydney, 1998.

<sup>8</sup> NSW Legislative Council, Cabramatta Policing, General Purpose Standing Committee No. 3, Report on Inquiry into Cabramatta Policing, 2001, p. 37. Co-ordinated at a regional level, the operation utilised officers from Cabramatta and other LACs.

<sup>9</sup> *Ibid* p. 45; and Lisa Maher, David Dixon, Michael Lynskey and Wayne Hall, *Running the Risks: Heroin, Health and Harm in South West Sydney*, 1998, p. 124.

<sup>10</sup> Lisa Maher, David Dixon, Michael Lynskey and Wayne Hall, *Running the Risks: Heroin, Health and Harm in South West Sydney*, 1998, especially pp 102-114.

<sup>11</sup> *Ibid* p 111-114. Academic Grant Wardlaw has argued that “Probably the most serious impediment to effective enforcement is the remarkable regenerative quality of most illicit drug markets.” Quoted in P. Green and I. Purnell, *Measuring the success of law enforcement agencies in targeting major drug offenders relative to minor drug offenders*, National Police Research Unit, Adelaide, 1995, p. 6.

Drug offences, unlike for example, certain types of theft, are polymorphous activities requiring only that the vendor and purchaser know how and where to contact each other. As such, they may be especially susceptible to displacement, which may take a variety of forms.<sup>12</sup>

In response to the tactics employed by police, drug users and dealers developed new modus operandi. Practices such as internally concealing drugs, using mobile phones to organise meetings with dealers and conducting transactions in new locations became more common.<sup>13</sup> In Cabramatta, drug suppliers who had been pressured out of the heavily policed public spaces increasingly moved their activities indoors, into flats and houses in residential areas.

### 1.2.2. The emergence of drug houses

Drug houses are not a new phenomenon in NSW. Houses, flats, sheds, warehouses and other types of premises have been used for illicit drug supply and manufacture for some time.<sup>14</sup> Drug supply operations housed inside premises are more likely to be shielded from police attention than those operating in public places. In addition, larger quantities of drugs can be stored on premises, where they can also be cut into smaller deals for eventual sale to the consumer. In the late 1970s, for example, the following drug supply operation was being run from a house in an inner-city suburb:

*Upon arrival in Sydney, the heroin was delivered to Mr BL's electronic fortress in Sydenham. Using an ordinary household electric mixer to remove lumps, BL adulterated 13 ounces of No. 4 heroin with three ounces of glucodin powder to make up one pound packets which he sealed in plastic sacks.<sup>15</sup>*

But while the use of premises for illicit drug manufacture or supply is not new, it appears that in the 1990s, drug premises burgeoned in some areas.

Police reported that drug houses proliferated in Cabramatta in the late 1990s. It is possible that the increasing risk of dealing in public places, generated by intensive street policing, caused the displacement of the drug trade into these premises.<sup>16</sup> Drug houses were often distinguishable by the presence of heavy fortifications, such as steel doors and barriers. These measures aimed to provide protection against rival drug dealers, while also providing an obstacle to police entry. Lookouts were also sometimes positioned nearby, to keep watch and alert occupants of an approach by police.

Major operations to deal with drug houses in Cabramatta were conducted prior to the formulation of the Drug Premises Act. For instance, in October 2000, police staged Operation Scotsville, which targeted drug houses in the area. Search warrants were executed on a number of houses, and by February 2001, 39 offenders had been charged.<sup>17</sup>

But drug houses continued to confront police with difficulties, particularly in establishing sufficient grounds to lay charges for offences such as drug supply.<sup>18</sup> Police reported that by the time they had gained entry to fortified premises, the drugs had already been destroyed. Once inside, police would often find items associated with drug supply, such as scales and quantities of balloons and foil used for wrapping drugs, but did not find sufficient evidence to lay charges.<sup>19</sup> The Drug Premises Act was introduced to enable police to take action in circumstances in which there would otherwise be insufficient evidence to lay charges for offences such as drug supply.

### 1.2.3. Introduction of the legislation

On 27 March 2001 the Premier delivered a statement announcing the Cabramatta Anti-Drug Strategy, which included the proposal to introduce drug house legislation. The anti-drug strategy was a three-stage plan designed to deal with a range of criminal justice, health and social issues associated with illicit drug use in Cabramatta. Stage one, the Criminal Justice Plan, comprised:

<sup>12</sup> D. Dixon and L. Maher, "Ahn Hai: Policing, Culture and Social Exclusion in a Street Heroin Market", in *Policing and Society*, 2002, Vol 12, No.2, p. 95.

<sup>13</sup> Lisa Maher, David Dixon, Michael Lynskey and Wayne Hall, *Running the Risks: Heroin, Health and Harm in South West Sydney*, 1998, especially pp. 102-114.

<sup>14</sup> See Alfred McCoy, *Drug Traffic, Narcotics and Organised Crime in Australia*, Harper and Row, Sydney, 1980. This history of the drug trade in Australia includes accounts of illicit drug supply operations run from premises in NSW, such as a flat in the Sydney suburb of Darlinghurst that was used for cocaine supply in the 1920s (pp. 120-122).

<sup>15</sup> *Ibid* p. 332.

<sup>16</sup> NSW Legislative Council, *Cabramatta Policing*, General Purpose Standing Committee No. 3 Report on Inquiry into Cabramatta Policing, 2001, p. 45.

<sup>17</sup> *Ibid*, p. 37.

<sup>18</sup> The principal drug legislation in NSW is the *Drug Misuse and Trafficking Act 1985*. Supply, possession and a number of other offences relating to prohibited drugs are contained within this Act.

<sup>19</sup> NSW Police, Mandatory Continuing Police Education Scheme Package, *Police Powers (Drug Premises) Act, 2001*, p. 1.

- new police powers in respect of drug houses
- an extension of police powers to issue reasonable directions under the Summary Offences Act, empowering police to move-on people buying or selling prohibited drugs and
- new police powers for internal searches of persons suspected of having internally concealed an illegal drug for the purposes of supply, to be conducted by medical practitioners.<sup>20</sup>

In sum, the Criminal Justice Plan involved the introduction of two new drug laws aimed at countering several different aspects of the drug trade. The remainder of the Cabramatta Anti-Drug Strategy involved drug treatment and prevention initiatives. Stage two involved a compulsory treatment plan, known as the Magistrates Early Referral Into Treatment Scheme (MERIT) and stage three was a plan for prevention and early intervention.

The Drug Premises Act was debated in Parliament in June 2001, and commenced on 1 July 2001. The application of the law is State-wide. When the law was introduced in Parliament, the Attorney General stated that the government was “legislating to ensure that drug dealers are caught across the state”.<sup>21</sup>

It should be noted that the Law Enforcement Powers and Responsibilities Act 2002 (LEPRA) repeals the Drug Premises Act. However, LEPRA has not yet commenced. Sections 140, 141, 142 and 143 of LEPRA substantially re-enact sections 5, 6, 7 and 9 of the Drug Premises Act which deal respectively with the issue of drug premises search warrants, the execution of drug premises search warrants, the search and arrest of persons during the execution of drug premises search warrants, and the offence of obstructing police executing a drug premises search warrant. LEPRA also provides for the insertion of a new Part 2B into the Drug Misuse and Trafficking Act 1985 which re-enacts the provisions of Part 3 of the Drug Premises Act that deal with the various offences involving drug premises.

## 1.3. The provisions of the Drug Premises Act

### 1.3.1. Drug premises search warrants

The Drug Premises Act gives police powers in respect of drug houses, referred to in the legislation as drug premises. In the Act, drug premises are defined as any premises “used for the unlawful supply or manufacture of any prohibited drugs”.<sup>22</sup>

The Act creates a new type of search warrant. Previously, if a search warrant was required in a drug investigation, a warrant could be applied for under the Search Warrants Act 1985. This would authorise police to enter and search premises for particular things, such as a “thing connected with a particular narcotics offence”.<sup>23</sup> The new Act creates a drug premises search warrant, authorising police to enter and search premises if they have reasonable grounds for believing that the premises are being used for the unlawful manufacture or supply of a prohibited drug.<sup>24</sup>

Police adopt what they have described as a two-stage approach to the “gathering of evidence to prove that premises are drug premises”.<sup>25</sup> Firstly, they must gather evidence that can be used in an application for a search warrant. This evidence must be sufficient to satisfy a magistrate that police have reasonable grounds for believing premises are drug premises.<sup>26</sup> If the search warrant is granted, police have the opportunity to gather further evidence that premises are drug premises.

### 1.3.2. Drug move-on powers

In addition to creating powers in respect of drug houses, the Drug Premises Act also gives police powers to deal with the street-level drug trade. By amending section 28F of the Summary Offences Act, the Drug Premises Act extends police powers to issue reasonable directions to people in public places. These provisions are usually referred to as the move-on powers.

Under the new drug move-on provisions, police may issue a direction to a person if police have reasonable grounds to believe that they are in a public place for the purpose of buying or selling drugs.<sup>27</sup> A police officer may, for example, issue a direction to a person they

<sup>20</sup> The *Police Powers (Internally Concealed Drugs) Act 2001* commenced on 1 July 2002 and is also being monitored by the NSW Ombudsman.

<sup>21</sup> The Hon. R. Debus, second reading speech, NSWPD, 30 May 2001, p. 13997.

<sup>22</sup> *Police Powers (Drug Premises) Act*, s. 3(1).

<sup>23</sup> *Search Warrants Act*, s. 5(1)(c).

<sup>24</sup> *Police Powers (Drug Premises) Act*, s. 5(1).

<sup>25</sup> NSW Police, Mandatory Continuing Police Education Scheme Package, *Police Powers (Drug Premises) Act, 2001*, p. 11.

<sup>26</sup> *Police Powers (Drug Premises) Act*, s. 5(1) and s. 5(2).

<sup>27</sup> *Summary Offences Act*, s 28F(1)(d) and (e).

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believe is in a public place with the intention of supplying drugs, to leave the area for a prescribed period of time. Police may issue a similar direction to a person who they believe is in a public place for the purpose of buying prohibited drugs. These new drug move-on provisions aim to assist police in dealing with drug transactions that occur in public places.<sup>28</sup>

### 1.3.3. Offences and penalties created by the Drug Premises Act

The Act creates several key offences relating to drug premises. These offences are:

- being on, entering or leaving drug premises<sup>29</sup>
- allowing use of premises as drug premises<sup>30</sup> and
- organising drug premises.<sup>31</sup>

A person cannot be convicted of any of the above offences unless it is first proven in court that premises are drug premises.<sup>32</sup>

Several other offences in the Act relate to the obstruction of police during the execution of the search warrant. A person may be convicted of these offences even if premises are not proven to be drug premises.

It is also an offence to disobey a drug related reasonable direction (also known as a drug move-on), provided that it has been issued in accordance with the Act.<sup>33</sup> There is no custodial penalty for this offence.

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<sup>28</sup> The Hon. R. Debus, NSWPD, 30 May 2001, p. 13999.

<sup>29</sup> *Police Powers (Drug Premises) Act*, s. 12.

<sup>30</sup> *Police Powers (Drug Premises) Act*, s. 13.

<sup>31</sup> *Police Powers (Drug Premises) Act*, s. 14.

<sup>32</sup> *Police Powers (Drug Premises) Act*, s. 11(1).

<sup>33</sup> *Summary Offences Act*, s. 28F(6). Disobeying a reasonable direction is only an offence if the police officer has complied with certain procedural requirements when they issue the direction, and if after giving a first direction, "the person initially refuses to comply, the police officer may again give the direction and, in that case, warn the person that failure to comply with the direction may be an offence." *Summary Offences Act*, s. 28F(5).



# Chapter 2. Methodology

In this chapter, we outline our research approach for this review of the implementation of the Drug Premises Act. We describe the police, court and other records that were examined.

Specific research methodologies utilised to review the operation of the Act are also outlined. In addition, there were several limitations in the data that were available for us to examine. The impact of these limitations on our review is also discussed.

We examined the use of the Drug Premises Act on 141 drug premises that were identified during the review period. The use of the Act on drug premises in nine LACs and by the State Crime Command<sup>34</sup> was examined in further detail.

In order to review the operation of the drug move-on powers, a detailed examination of their use by the Cabramatta LAC in the first year of the review period was conducted, as well as an audit of their use in 17 commands in the second year of the review period. State-wide statistics on the use of these powers over the review period are also provided.

## 2.1. Research approach

Our research was guided by the concerns that were raised about the Act in parliamentary debate, in submissions to our discussion paper, and by issues that emerged during the course of the review.

A number of qualitative and quantitative research methods were used to review the implementation of the Drug Premises Act. Much of the research and analysis contained in this report is derived from police and court records and other sources, such as interviews and focus groups. The aim of using a range of methods was to minimise the impact of the limitations of any one information source or method.

Our research approach also aimed to provide a broad perspective on the implementation of the Drug Premises Act. A wide variety of stakeholders were consulted during this review including police, health professionals, drug users and drug user advocacy groups. Part of this consultation process also involved the production of a discussion paper that invited comment on the operation of the Act from about 500 stakeholders.

The research focus of this review was to examine data that was specific to the implementation of search warrant powers in relation to drug premises. Our review examines matters such as the use of drug premises search warrants, court cases involving drug premises offences, and the extent to which particular premises met the criteria that may be used to define drug premises in the Act. However, we have not examined broader questions, such as how the procedures for videoing and executing search warrants were applied in relation to the execution of warrants under the Drug Premises Act.

In this review, time, resources, concerns to respect the privacy of individuals and access to relevant persons or information, sometimes limited our examination of issues. For instance, we were only able to interview a very small number of drug users about their experience of the drug move-on powers. Similarly, rather than reviewing all search warrant documents relating to the use of the Act, we audited ten commands<sup>35</sup> out of a total of 39 that used the legislation.

It is also important to note the impact of difficulties in accessing certain police records and other information for this review.<sup>36</sup>

## 2.2. The heroin drought

It is necessary to acknowledge the likely impact of the heroin drought on our research findings for this review.

In late 2000, it appeared that the supply of heroin in Sydney was drying up. In early 2001, researchers investigating the Cabramatta street-level drug market found that it was taking drug users much longer than usual to score and confirmed the existence of a heroin shortage.<sup>37</sup> This phenomenon continued in the Cabramatta street-level market and elsewhere in Australia, and became known as the heroin drought.

The scale and longevity of the heroin drought is unprecedented, and its long term impact on issues such as drug related crime, street-level drug markets and drug user behaviour is not yet fully understood. However, there are various studies that have begun to investigate some of these questions. A study by the Bureau of Crime Statistics and Research (BOCSAR) published in October 2001 found that:

<sup>34</sup> The State Crime Command is a unit within NSW police that conducts specialised investigative work. It is comprised of a number of units, such as the Drug Squad. Police officers in the State Crime Command work across NSW, where required.

<sup>35</sup> Nine of these were LACs, and the State Crime Command was also audited.

<sup>36</sup> There was a significant delay at the start of this project in negotiating access to search warrant documents with NSW Police.

<sup>37</sup> BOCSAR, "The Australian Heroin Drought and its Implications for Drug Policy", October 2001.

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The heroin drought has led to sharp falls in heroin use, expenditure on heroin and the number of heroin overdoses. The drought also appears to have prompted some heroin users to seek methadone treatment and others to consume more of other drugs, such as cocaine.<sup>38</sup>

In 2004 BOCSAR released the previous year's recorded crime statistics that showed a notable reduction in half of the major offence categories, particularly property crime offences, and attributed this reduction in large part to the heroin drought.<sup>39</sup> Another study by the National Drug and Alcohol Research Centre (NDARC) examined the impact of the heroin drought at several sites in NSW, including Cabramatta, but had not been published at the time of writing.<sup>40</sup>

It is beyond the scope of this review to investigate the particular impact that the heroin drought may have had on the implementation of the Drug Premises Act. For example, it has not been possible to gauge the impact that the heroin drought may have had on the frequency of the use of the drug move-on powers in Cabramatta or to determine the extent to which the heroin drought accounts for any changes in the street-level drug market since the introduction of the drug move-on powers.

## 2.3. Research data and sources

The key research sources that were utilised in our review of the implementation of the Drug Premises Act are outlined below.

### 2.3.1. NSW Police records

Police records on the use of the Drug Premises Act came from the following sources:

- data provided by NSW Police on the frequency, location and use of the legislation, including demographic information about people who were charged under the Act or issued with drug move-ons
- search warrant documents
- Computerised Operational Policing System (COPS) information, particularly event narratives relating to the use of the drug premises and drug move-on powers in the Act
- Police Weekly
- NSW Police Intranet
- training material from the NSW Police College
- Operations and Crime Review (OCR) transcripts<sup>41</sup> and
- interviews and focus groups with police.

### 2.3.2. Court records

We examined 140 court transcripts relating to the use of the Drug Premises Act.

### 2.3.3. Representations

A legal centre provided us with representations that the centre had made to Cabramatta LAC for the withdrawal of charges in relation to five instances in which charges had been laid for disobeying a drug move-on.

### 2.3.4. Bureau of Crime Statistics and Research

Information on penalties, pleas and sentences relating to people who were charged under the drug premises provisions of the Act was provided by BOCSAR at our request.

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<sup>38</sup> Ibid.

<sup>39</sup> BOCSAR, "Media Release: NSW Recorded Crime Statistics 2003", 15 April 2004.

<sup>40</sup> One of the research questions of this study, entitled "The causes, effects and implications of the heroin shortage in NSW, SA and Victoria", is to "assess the effect of the heroin shortage on heroin and other drug use, public health, crime and the work of law enforcement, health and emergency services". National Drug and Alcohol Research Centre (NDARC) Website, "Current Projects", 4 May 2004.

<sup>41</sup> OCRs are an internal mechanism within NSW Police to monitor the performance of each LAC in key areas of crime reduction, such as initiatives to deal with drug related crime or street-level dealing. Representatives from each LAC appear before the Commissioner of Police at OCRs and outline progress in addressing the particular crime problems that they face.



### 2.3.5. Health data

NSP distribution statistics were obtained from the South West Sydney Area Health Service.<sup>42</sup>

We conducted interviews with health professionals and community workers in south west Sydney about the use of the Drug Premises Act in Cabramatta.

### 2.3.6. Interviews with drug users

We conducted interviews with drug users in Cabramatta and Liverpool about the use of the drug move-on powers.

### 2.3.7. Other interviews and focus groups

We conducted interviews with a range of community representatives in Cabramatta.

One focus group was conducted with a drug user advocacy group about the legislation. A second focus group was conducted with a senior health professional, a representative from a sex worker advocacy group and a representative from a legal centre about a use of the Drug Premises Act in eastern Sydney.

### 2.3.8. Discussion paper submissions

In July 2003, we distributed a discussion paper on the Drug Premises Act to about 500 agencies and individuals including:

- NSW Police
- legal practitioners
- Area Health Services in NSW
- relevant government departments
- needle and syringe exchange outlets
- drug user advocacy groups and
- academics.

The discussion paper canvassed key issues that had emerged concerning the operation of the Act and invited comment on these issues.

We received 29 submissions in response to our discussion paper.

### 2.3.9. Complaints

During the two year review period, we received one complaint about the use of the drug premises legislation.

### 2.3.10. Other sources

A range of other information was also examined, including parliamentary debates and media reports about the Act. We also obtained information from other agencies, such as a home insurer, to investigate particular research questions.

## 2.4. Research methods

### 2.4.1. Analysis of event narratives

In the NSW Police Handbook, police are advised to note down information about an event at the scene, and to then record this information on COPS as soon as possible after their return to the police station.<sup>43</sup> We examined the event narratives relating to each of the 141 incidents in which the drug premises provisions in the Act were used.

At our request, NSW Police conducted a search of the COPS database that produced a list of the event numbers relating to each incident in which charges were laid under the Drug Premises Act. We then extracted each of these event narratives from the COPS database for examination. NSW Police also provided a list of event numbers relating to uses of the drug move-on powers, and we audited a sample of event narratives totalling 476.

<sup>42</sup> This Health Service is responsible for the delivery of health services, such as needle and syringe exchange, in suburbs such as Cabramatta and the neighbouring suburb of Liverpool.

<sup>43</sup> NSW Police, *NSW Police Handbook*, Chapter C, p. 68.

Event narratives are a fruitful source of information. The narratives describe an incident usually fairly contemporaneously from a police perspective and are often quite detailed.<sup>44</sup> Event narratives are also the only document type that we have been able to examine in relation to every use of the Act in which charges were laid under the drug premises provisions.

We analysed the content of drug premises event narratives to examine features such as the police description of how the drug premises and the illicit drug activity were taking place.

The quantitative analysis of event narratives involved collating and analysing data from all event narratives under the following categories.

#### Details of the use of the act:

- when, where and how often the Act was used
- if a warrant was obtained and what type (this was not always recorded) and
- any details provided on the execution of the warrant, for example, if the police entry to the premises was obstructed by the occupants.

#### Details of the premises:

- any security features noted by police
- if the premises were described as “non-domestic” and
- if the presence of lookouts was noted.

#### Items seized from the premises:

- any quantities of drugs seized
- any syringes found on the premises
- any items associated with drug supply or manufacture found
- any quantities of money seized and
- any firearms/ammunition or other prohibited weapons found on the premises.

This data was collated and analysed to assess the extent to which premises met the criteria that may be used to define drug premises in the Act. Data on the quantities of money and drugs seized from premises enabled us to investigate the level of drug supply that the Act appeared to be targeting.<sup>45</sup>

Our examination of COPS event narratives also enabled us to:

- calculate the number of premises, including dwellings and cars, in relation to which the Act was used and charges were laid over the review period
- examine all uses of the Drug Premises Act when charges were laid under this Act
- identify any State-wide patterns that emerged and
- collate State-wide statistics on aspects of the use of the Act, such as the quantities of drugs seized over the review period.

The table below sets out the number of event narratives examined for this review for each police region and for the State Crime Command.

**Table 1. Drug premises event narratives examined for this review**

Police region/command	Number of event narratives examined	Number of uses of the Drug Premises Act in which charges were laid under this Act <sup>46</sup>
Greater Metropolitan Region	98	79
Inner Metropolitan Region	29	16
Northern Region	9	9
Southern Region	17	12
Wesstern Region	7	7
State Crime Command	13	4
Total	181	141

Source: COPS database, event narratives.

<sup>44</sup> In some instances, more than one event narrative was written about a single use of the Act. Each of these narratives was usually been written by another police officer involved in the incident.

<sup>45</sup> This data is set out in our chapter, “Targeting Drug Supply”.

<sup>46</sup> Police in several LACs that we audited notified us of instances in which a drug premises search warrant was granted, but no drug premises charges were laid. These instances have been included.

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As the table indicates, more than one narrative was sometimes written about a single use of the legislation.

Unless otherwise stated, the quotes from event narratives are verbatim, and have not been corrected for spelling, grammar or typographical errors made by police.

## 2.4.2. Examination of search warrant documents in ten commands

In addition to our examination of event narratives relating to the use of the drug premises provisions, we also examined search warrant documents relating to the use of the Act in nine LACs and by the State Crime Command.<sup>47</sup> The purpose of this audit was to enable us to cross check data that was provided in event narratives and to build up a more detailed picture of how the legislation was used in these areas.

We requested the following documents from police:

- intelligence reports
- the search warrant application
- the search warrant (or “notice” if it was a telephone warrant)
- operational orders or a written briefing
- the event narrative and
- search warrant video.

We audited the following commands: Cabramatta, Campbelltown, Kings Cross, Redfern, Mid North Coast, Coffs Harbour, Richmond, Shoalhaven, Chifley, and the State Crime Command.

Some commands were selected to investigate specific research questions. Because a key impetus for the introduction of the Act was to assist police in dealing with drug premises in Cabramatta, we sought to examine in some detail how useful the legislation had been to police in Cabramatta. Similarly, since the Act was also intended to assist police in dealing with organised and professional drug dealers, we sought to examine how useful the Act had been to the State Crime Command Drug Squad, a unit specifically tasked to deal with this type of drug offender.

Another factor we considered in selecting commands was a desire to examine the use of the Act in both rural and urban areas. We selected LACs from the Southern, Northern and Western police regions.

Campbelltown LAC, on the south western edge of Sydney, was selected because it was second to Cabramatta in the frequency of its use of the Act during the first year of the review period.

The remaining Sydney metropolitan commands were selected for a variety of reasons. Redfern has a high proportion of Aboriginal residents and has entrenched problems with illicit drugs in areas such as the Block. Historically, the relationship between Aboriginal people and police in Redfern has also been a difficult one. In addition, during the course of this review, it emerged that a number of prosecutions for drug premises offences in Redfern had failed.<sup>48</sup> Kings Cross was selected for auditing following concerns that were raised about an incident in which the Act was used on a safe house brothel in the area. In addition, Kings Cross, like Cabramatta, has also been known for the prevalence of illicit drug activity. This area was also of interest to our office because drug law enforcement in this area had been a key area of investigation for the Wood Royal Commission.

## 2.4.3. Search warrant and other document types examined

In the Appendix of this report, we have described the various types of search warrant documents, and other types of documents such as intelligence reports, that we examined for this review.

## 2.4.4. Demographic information about people charged or issued with drug move-ons

At our request, NSW Police conducted a search of the COPS database to locate every charge laid for every offence in the Drug Premises Act, and demographic information about the person who was charged. The information provided identified the following in relation to each person who was charged for an offence under the Act:

- age
- gender
- Aboriginal and Torres Strait Islanders (ATSI) status and
- country of birth.

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<sup>47</sup> Our original information request for search warrant documents for our review of the Act was sent to NSW Police in October 2001. NSW Police expressed concerns about the resources that would be involved in collating these documents. Consequently, we reduced our request to a set of “Minimum Information Requirements”. Both the original information request, and the “Minimum Information Requirements” that were given to LACs are reproduced in the Appendix of this report.

<sup>48</sup> Several of these cases are discussed later in this report in the chapter, “Offences in the Drug Premises Act”.

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This data informed our assessment of whether particular concerns, such as the concern that young people would be targeted by the Act, were borne out.

For our audit of the drug move-on powers, we have also used racial appearance data from the COPS system. This information was used to assist us to investigate concerns that particular racial groups were being targeted in the use of the drug move-on powers. This field does not purport to be an accurate assessment of the person's ethnicity, but is based on a visual assessment of the person that is made by the police officer.<sup>49</sup>

It is also important to note that COPS does not record systematically how many people were moved on in an incident.<sup>50</sup> Not all records noted demographic details of every person moved on. For example, while the narrative might refer to four or five people moved on, the demographic details for only one or two people in the group were recorded.

#### 2.4.5. Court data

Statistics on court outcomes and pleas relating to persons charged with drug premises offences were provided by BOCSAR at our request. This information was not available for all persons who were charged, partly because some matters had not yet been heard in court.<sup>51</sup>

We also collected data on pleas and court outcomes from transcripts we received from local courts, and sought advice directly from the courts if any of this information was not provided in the transcript.

Another important research question was how the Drug Premises Act was judicially interpreted. One hundred and forty court transcripts relating to the key offences in the Act were examined. These transcripts were requested from local courts in metropolitan and rural areas. Extracts from these transcripts have mostly been included in the chapter "Offences in the Drug Premises Act".

#### 2.4.6. Interviews and focus groups

We conducted interviews and focus groups with police, health professionals, community representatives, a drug user advocacy group, legal practitioners and drug users.

Interviews with the commander of the NSW Police Drug Squad and the head of Drug Policy in the NSW Police were conducted. Interviews were also conducted with senior police from Cabramatta LAC.

Two focus groups were held at Cabramatta LAC. One involved police who had used the legislation in relation to drug premises in the area, and a second focus group was conducted with police at Cabramatta LAC who had used the drug move-on powers.

The Crime Manager and a police officer experienced in the use of the Drug Premises Act were interviewed at several LACs we visited. Police in LACs in the Western, Southern and Northern regions were interviewed by telephone and asked about uses of the legislation in their area.

Telephone interviews were conducted with health professionals and community workers who worked in Cabramatta, and with community representatives, to seek their views on the impact and operation of the legislation.

A focus group was held to investigate the use of the Act on a safe house brothel in an inner city LAC. A senior health professional from the area, a representative from a sex worker advocacy group and a representative from a local legal service participated in the group. A focus group was also conducted with members of a drug user advocacy group about the legislation.

In December 2003, the project officer for this review attended an area in Cabramatta close to a site where syringes are distributed and another site in Liverpool where methadone is dispensed, to interview drug users about the use of the drug move-on powers in the area. A worker from the NSW Users and AIDS Association (NUAA) was also present and assisted in facilitating these interviews. Clients were approached after they had used these services and asked if they would like to participate in an interview. These interviews were semi-structured and were tape-recorded.

While far from representative, these interviews provided an insight into the views and experience of illicit drug users.

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<sup>49</sup> We discuss racial appearance data in more detail in Chapter 11: Drug move-on powers in Cabramatta.

<sup>50</sup> For those records we audited, we counted how many people were moved on in each incident. For example, in our State-wide audit, 246 incidents were audited, and in these incidents, a total of 394 people were moved on.

<sup>51</sup> According to the COPS database, 402 charges were laid under the Drug Premises Act during the review period. Information on pleas and court outcomes was available in relation to 297 of the charges that were laid over the review period.

## 2.4.7. Complaints

The NSW Ombudsman is responsible for handling complaints about public authorities in NSW, including NSW Police. We receive a number of complaints and inquiries regarding NSW Police each year.

During the review period, we received one complaint about an incident in which the Drug Premises Act was used. The incident, and the complaint arising from it, is described later in this report. We did not receive any complaints about the use of the drug move-on powers, though several complaints were received about the use of move-on powers generally.

In considering the apparent absence of complaints about this legislation, it is important to note that there are a number of factors that may influence a person's decision to complain.<sup>52</sup> Some of these include: knowledge of complaint mechanisms, fear of recrimination, a lack of confidence in government agencies and/or police, and the power imbalance between the complainant and the subject of the complaint, in this case, a police officer. These factors may have a particular impact on vulnerable groups in the community, such as young people, the homeless, some illicit drug users, people from Non- English Speaking Backgrounds and Aboriginal people. For example, research conducted on young Asian people's experience of policing in Cabramatta found that:

While many young people were angry about their experiences with the police, most felt powerless to do anything about it and expressed a lack of confidence in formal mechanisms for dealing with complaints about police.<sup>53</sup>

## 2.4.8. The drug move-on audit

In order to review the use of the drug move-on power, we analysed data provided by NSW Police, extracted from COPS. This data enabled us to calculate how many drug related move-ons police recorded on the COPS database over the review period.

Below, we discuss how police record drug move-ons on the COPS database and how recording practices and procedures impacted upon our review. We also outline the methodology used to conduct our audit of the use of the drug move-on powers. We audited drug move-on records in Cabramatta (the Cabramatta audit) and conducted an audit of 17 LACs across NSW (the State-wide audit).

## 2.4.9. How is a move-on recorded?

When police create any event on COPS, they must identify an incident type for the event.<sup>54</sup> Originally, a move-on incident was classified as a "street offence". Up until changes in May 2002, police were required to record whether the incident was an "obey direction to move-on" or a "refuse direction to move-on", and could then further classify the incident as "drug related". A drug move-on incident in which the direction issued was complied with, may have been recorded as follows:

Event number	Incident Type	Incident further classification	Associated Factor	Additional factor
12345678	Actual street offence	Obey direction to move-on	Drug related	Other

Incidents classified with an associated factor of "drug related" constitute all those incidents in which the police officer considered that drugs were a related factor in the incident. NSW Police advised us that:

*"DRUG RELATED" expresses the submitting officer's opinion that drugs were involved in some way in the relevant incidents. The events listed here will capture the larger set of incidents than those directly related to s 28F(1)(d) and (e) of the Summary Offences Act.<sup>55</sup>[emphasis added].*

<sup>52</sup> These issues are discussed more fully in our report on the use of the original move-on powers, NSW Ombudsman, *Policing Public Safety, Report under s. 6 of the Crimes Amendment (Police and Public Safety) Act 1998*, 1999, pp 96-99.

<sup>53</sup> Lisa Maher, David Dixon, Wendy Swift and Tram Nugyen, Anh Hai: *Young Asian People's Perception and Experiences of Policing*, Sydney, 1997, p. 42, quoted in NSW Ombudsman, *Policing Public Safety, Report under s. 6 of the Crimes Amendment (Police and Public Safety) Act 1998*, p. 97.

<sup>54</sup> An event can contain more than one incident type.

<sup>55</sup> Email, NSW Police, External Agencies Response Unit, Subject: "Move-ons", 21 October 2002.

<sup>54</sup> An event can contain more than one incident type.

<sup>55</sup> Email, NSW Police, External Agencies Response Unit, Subject: "Move-ons", 21 October 2002.

For example, a move-on incident created under the original move-on powers because a person was obstructing traffic, in which the person was also drug affected, might be recorded with “drug related” as an associated factor. The statistics included in this report represent the number of move-ons in which drugs were a related factor, and not the total number of drug move-ons. The reasons for our use of the “drug related” classification to calculate statistics are discussed below.

In our audit of the use of the drug move-on powers in Cabramatta LAC during the first year of the review period, those incidents that did not appear to have involved a use of the drug move-on powers were not included in our count or analysis of directions issued under these powers.<sup>56</sup> Of the 198 drug related obey move-on incidents that we examined in the Cabramatta LAC, 179 appeared to have been issued under the drug move-on powers. Most of the records that were removed from the Cabramatta audit were instances in which police moved a person on because it was suspected that they were involved in street prostitution. The following extract from an event narrative is an example of such an incident:

*Police believe that they were using the lane for prostitution. Police identified themselves, gave [them] a direction to leave the ... area and informed them that failure to comply would be an offence.<sup>57</sup>*

Instances in which the direction appears to have been issued under both the original move-on powers, and the drug move-on powers, were included in our count of directions issued under the drug move-on powers.

Lack of detail in many event narratives examined in our State-wide audit of drug related directions made it more difficult to discern which move-on powers the direction had been issued, so we did not exclude any records from the audit on this basis. However, two records were excluded from the State-wide audit because our analysis of the event narratives clearly indicated that they were not move-on incidents.<sup>58</sup>

#### 2.4.10. Changes in the recording procedures for drug move-ons

In late May 2002, about 11 months after the drug move-on provisions commenced and roughly half way through the review period, NSW Police introduced a new method of recording move-ons. This change required that police classify an incident as a “comply direction drug related” (the other option is “not drug related”) or “refuse direction - drug related” (or “not drug related”). Two new “additional factors” were added to COPS enabling police to further classify the drug related move-on as buying or selling.

If, for example, police concluded that a person was purchasing drugs and consequently moved them on, under the new recording method the incident might have been recorded as follows:

Event number	Incident Type	Incident further classification	Associated Factor	Additional factor
12345678	Actual street offence	Comply direction – drug related	Drug related	Other

This change to the procedures for recording move-ons was explained to police on the NSW Police Intranet, as follows:

*The Street Offence Incident Type in COPS has been expanded to allow recording of directions to move-on when people are reasonably suspected of loitering for the purposes of buying or selling drugs.<sup>59</sup>*

It is likely that this change affected the number of drug move-ons correctly recorded by police while police adjusted to the new system. For example, it is possible that police officers were not aware of this new method of recording move-ons and continued for a period to record drug move-ons using the old method.

<sup>56</sup> Of the 198 drug related move-on incidents that we examined in the Cabramatta LAC, 179 appeared to have been issued under the drug move-on powers.

<sup>57</sup> COPS event narrative, Drug Move-on incident 190.

<sup>58</sup> A further four records were excluded because they were either duplicate records, or their unique identifier no longer existed on COPS.

<sup>59</sup> NSW Police, Police Intranet, “Street Offences Move-on Directions”.

NSW Police advised us that calculating the number of move-ons issued by using the “additional factor”, as opposed to the associated factor of “drug related”, may double or triple the count of the number of directions issued.<sup>60</sup> This is because police are able to record more than one additional factor in relation to a single move-on incident. For this reason, we used the number of “drug related” move-ons for our statistics and not a count of the number of move-ons based on the “additional factor” categories.

It is noted that a further change to the method of recording move-ons occurred after the review period ended and this is discussed below.<sup>61</sup>

#### 2.4.11. The Cabramatta Audit

For the first year of the operation of the Act (1 July 2001 – 30 June 2002), our auditing was confined to “drug related” move-ons issued in Cabramatta. We focused on Cabramatta because of the government’s focus on Cabramatta when introducing this legislation. In addition, Cabramatta police were overwhelmingly the highest recorded users of move-ons during this period, comprising 49.84% of the total number of move-ons issued in the first year.

There were 2,375 move-on events recorded on COPS by Cabramatta police for the first year of the operation of the Act. We analysed 230 (approximately 10%) of these records.

We also audited a small sample of drug move-ons in Cabramatta in the second year as part of the State-wide Audit.

#### 2.4.12. The State-wide Audit

To examine the use of the drug move-on powers in other locations we audited the use of drug move-ons from 17 LACs across NSW, for the second year of the operation of the Act (1 July 2002 till 30 June 2003).

Generally, LACs were chosen to represent metropolitan, regional and rural areas. However, some LACs were chosen for other reasons, including:

- the use of the drug premises provisions was significant and we sought to investigate if there were any links in the use of the two aspects of the legislation
- the active street-level drug trade in the area allowed a comparison with the way the drug move-on powers were being used in Cabramatta and/or
- the high Aboriginal and Torres Strait Islander (ATSI) populations allowed a comparison with the findings in the Policing Public Safety report that ATSI people were receiving a high number of move-ons.

Fairfield LAC was chosen to allow some examination of anecdotal claims that drug trade had been displaced there from Cabramatta as a result of the use of the move-on powers. Cabramatta was also selected to assess whether police had continued to issue seven day directions.

In the LACs we audited, a total of 3,736 drug related move-ons were issued over the review period. We selected approximately 6% or 252 of these, to analyse more closely. We excluded six records and ultimately audited 246 records.<sup>62</sup>

During the second year of the operation of the Act, Fairfield and Cabramatta recorded the two highest numbers of drug move-ons disobeyed in NSW. For this reason, a sample of disobeyed move-ons in Fairfield and Cabramatta was also audited. There were few disobeyed move-ons in the rest of the State. In order to understand how disobeyed move-ons were being dealt with across NSW, they were all included in the audit.

Table 2 displays the number of move-ons audited for each LAC included in the State-wide audit. Table 2 also shows the proportion of move-ons audited to the total number of move-ons issued in that LAC for the review period.

<sup>60</sup> NSW Police, Email, Corporate Information Unit, 19 December 2003.

<sup>61</sup> Described in more detail below in the discussion of, “Artificially inflated statistics”.

<sup>62</sup> We removed 4 records from the audit because their unique identifiers no longer existed on the COPS system or had already appeared once before on the list of move-on events provided by police. All 4 of the records that were removed from the audit were from Barwon LAC. A further 2 records were removed because their narratives revealed that they were not move-ons. These were from COPS event narratives, drug move-on incidents N247 and N248. In both cases, there was no attempt made by the officers involved to move the person on, and in both cases the person was arrested and entered into custody.

**Table 2. LACs audited, 1 July 2002- 30 June 2003**

	<b>Selected LAC</b>	<b>Total number of records audited</b>	<b>Total number of drug related move-ons issued in LAC</b>	<b>Number of records audited as a % of drug move-ons in LAC</b>
1	BARRIER	3	3	100.00%
2	BARWON	10	14	71.43%
3	BLACKTOWN	2	71	2.82%
4	CABRAMATTA	29	1069	2.71%
5	CAMPSIE	3	171	1.75%
6	CANOBOLAS	4	4	100.00%
7	COFFS/ CLARENCE	21	94	22.34%
8	DARLING RIVER	12	12	100.00%
9	FAIRFIELD	30	909	3.30%
10	KINGS CROSS	25	629	3.97%
11	LAKE ILLAWARRA	21	77	27.27%
12	MARRICKVILLE	21	85	24.71%
13	NORTH SHORE	23	108	21.30%
14	ORANA	8	8	100.00%
15	REDFERN	26	188	13.83%
16	ROSE BAY	7	7	100.00%
17	WOLLONGONG	1	287	0.35%
	<b>Total</b>	<b>246</b>	<b>3736</b>	<b>6.58%</b>

## 2.5. Limitations in the data and sources that were available

There were several limitations in the information that was available to us in our review of this Act.

### 2.5.1. COPS

First, it is important to note at the outset that the accuracy and completeness of data on the COPS system is subject to a number of variables.<sup>63</sup> Some of these variables include simple key-boarding mistakes, or not making a record of an incident on COPS at all. In the Ombudsman's previous review of move-ons, focus groups were held with police which revealed that there were many reasons why a police officer might decide not to record a move-on incident on COPS, including:

- dissatisfaction with recording for recording's sake
- not having enough time
- recording took police off the street
- without name and address details there was no point in recording and
- the COPS system is complicated and time consuming to use.<sup>64</sup>

In addition, if a move-on is complied with police sometimes consider this to be an unofficial direction and may not record it.<sup>65</sup>

Another factor that impacted on the completeness of data is that some fields on COPS are mandatory, and some are not. For this reason, particular information about a person, such as racial appearance, is not always recorded on COPS.

<sup>63</sup> These issues are discussed more fully in our report, NSW Ombudsman, *Report under s.6 of the Crimes Legislation (Police and Public Safety) Act 1998*, pp 90-92.

<sup>64</sup> NSW Ombudsman, *Policing Public Safety*, pp 90-91.

<sup>65</sup> For example, COPS event narrative, drug move-on incident 112.



Another data limitation is that COPS event narratives, which provide a key source of information about uses of the Drug Premises Act, are free text fields, and therefore police are not required to record any particular details of their use of the legislation. However, it is likely that if police believe after searching a place that it is a drug premises, and they have charged people under the Act, they will include relevant information in the event narrative, such as noting the presence of fortifications, syringes, firearms or other features that will support their assertion that the premises are drug premises.<sup>66</sup>

This data limitation also applies to our examination of event narratives relating to uses of the drug move-on powers. The free text event narrative field was the only means to systematically capture information on uses of the drug move-on powers such as:

- why a person came to police attention
- the reasons why a drug move-on was issued
- if a drug move-on was disobeyed, the behaviour or conduct that constituted disobeying the direction that had been issued and
- the type of direction that had been given.

However, because police are not required to record any particular aspect of their use of the drug move-on powers in the event narrative field, it was not always possible to determine whether there appeared to be insufficient *grounds* to issue the drug move-on, or if the reasons were not adequately *recorded*.

A final issue in relation to COPS data is the artificial inflation of certain statistics. NSW Police make use of statistics as a performance measure for commands. An issue that was identified during our earlier review of move-ons was that some police commanders may have felt pressured to increase the number of move-ons (and knife searches) recorded on COPS. While it was difficult to quantify how this pressure affected the total number of move-ons recorded on COPS, it is possible that it influenced recording practices and actual use of the move-on power by police.<sup>67</sup>

It is possible that this was also the case with drug move-ons. However, this was not a focus for this review.

We also received a complaint in 2001 which raised questions about the way police recorded knife searches on COPS.<sup>68</sup>

The complaint investigation found that knife searches had been incorrectly recorded because of a lack of knowledge, poor supervision and as a result of the configuration of COPS (which only allowed searches to be recorded in one way). For example, some searches that were conducted under the Drug Misuse and Trafficking Act<sup>69</sup> were being recorded as knife searches under the Summary Offences Act.<sup>70</sup>

As a result of this complaint, on 1 July 2003 NSW Police changed the way that searches and move-ons are recorded on COPS. Searches and move-ons are no longer recorded under the umbrella of “street offence”, but are now recorded under the new categories of “person search”<sup>71</sup> or “move-on”. Another outcome of this complaint was that police conducted their own audit of move-on and knife search events. Our audit reflected a number of the findings of the NSW Police audit.

## 2.5.2. NSW Police audit of COPS

NSW Police have identified that the quality of move-on event narratives is “in need of improvement”.<sup>72</sup> A recent audit conducted by NSW Police of move-on and search event narratives found that 42% of the of the narratives examined did not contain enough information.<sup>73</sup>

The NSW Police audit identified factors such as insufficient knowledge of the legislation, or a lack of understanding of recording requirements as reasons why a move-on may not be correctly recorded.<sup>74</sup> In our audit of the drug move-on powers for this review we found that some incidents had been recorded as drug move-ons, when drugs were not mentioned in the event narrative at all and/or the narrative did not state that the person was actually moved on. For example, two cases we audited were each recorded as a move-on, after a person had been moved-on because of an indication by a drug dog.

<sup>66</sup> In a focus group we conducted at Cabramatta Police, officers said that event narratives are “your facts sheet”, where police put in the “proofs” relating to the offence.

<sup>67</sup> NSW Ombudsman, *Policing Public Safety*, pp. 93-94, 226.

<sup>68</sup> For more information about this complaint, see the NSW Ombudsman, *Annual Report 2002-2003*, p. 68.

<sup>69</sup> According to s37(4) of the *Drug Misuse and Trafficking Act 1985*, a member of the police force may stop, search and detain: (a) any person in whose possession or under whose control the member reasonably suspects there is, in contravention of this Act, any prohibited plant or prohibited drug, or (b) any vehicle in which the member reasonably suspects there is any prohibited plant or prohibited drug which is, in contravention of this Act, in the possession or under the control of any person.

<sup>70</sup> *Summary Offences Act*, s28A.

<sup>71</sup> Under this new recording system, police are now also required to record the legislative authority under which searches are conducted.

<sup>72</sup> NSW Police, “Strategic Audit of Move-ons & Knife Searches”, December 2003.

<sup>73</sup> *Ibid.* The impetus for this audit was the complaint we received about recorded knife searches on COPS that we discuss below.

<sup>74</sup> This audit was conducted by NSW Police following a complaint that was made to our office about the recording of knife searches. This complaint, and the outcome of this audit, is discussed later in this chapter.

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The NSW Police audit also found that while one LAC might record a group move-on as one move-on incident, another LAC might record a group move-on as a separate incident for each person moved on.

The NSW Police audit recommendations included that Standard Operating Procedures (SOPS) be developed for the use, recording and verification of these events, and that a “refresher” training package be rolled out to all police as a priority. In addition, it was recommended that a State-wide memorandum be circulated to all commanders directing a system of quality assurance for COPS entries to be implemented in all commands, and requiring duty officers and/or crime managers to audit events on a regular basis.

We are currently in discussions with NSW Police about the implementation of these recommendations.

### 2.5.3. Information about drug premises search warrants

One of the most significant limitations in the data available for our review of the drug premises provisions was that NSW Police were only able to provide information about instances in which the Drug Premises Act was used and charges were laid. This had a particular impact on our scrutiny of drug premises search warrants. NSW Police advised us that the COPS database is not able to report on all drug premises search warrants that were executed. Thus, for example, if police executed a drug premises search warrant but did not lay charges under the Drug Premises Act, the relevant event narrative was not included in the reports that were provided to us by NSW Police. The absence of this information means that we have been unable to investigate several important issues including:

- the total number of drug premises search warrants issued during the review period
- the number and nature of instances in which drug premises search warrants were applied for and executed, but no charges laid and
- the number of applications for drug premises search warrants that were not granted by a magistrate, or not executed by NSW Police.

Clearly, these are important questions. For example, the absence of information about drug premises search warrant applications that were not granted by the magistrate means that any issues flowing from unsuccessful applications have not been examined. We have, however, been advised by local police of two instances in which drug premises search warrants were executed but no charges under the Act were laid and these are discussed in this report. However, we do not know how often this happened across the state.<sup>75</sup>

Thus when we refer to the use of the drug premises provisions in this report, we only refer to instances in which charges were laid.

### 2.5.4. Information from audited commands

Another limitation on the information available to us was that police in the ten commands that we audited were not always able to provide the documents that we requested. Search warrants generate a large quantity of documentation and police do not always keep copies of the relevant documents. For example, we only received a small proportion of drug premises search warrant applications so it has not been possible to conduct a systematic analysis of the basis upon which search warrants were applied for. In addition, the local court system for recording search warrant applications could not identify a drug premises search warrant from other types of search warrants. Thus it was not possible to use local court records of drug premises search warrant documents.

We have documented how many and what type of document we received from each police command in the Appendix of this report.

Another factor impacting on this review was that it was not until May 2002, 11 months after the commencement of this legislation and our review, that access to search warrant documents from LACs was negotiated with NSW Police. This delay reduced the time available to conduct research for this review.

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<sup>75</sup> These instances are discussed in the chapter, “Drug premises search warrants”.

# Chapter 3. Legislative survey

This chapter sets out:

- the powers in the Drug Premises Act
- the offences that have been created by the Act
- related legislative powers in NSW such as those that are contained in the Search Warrants Act 1985
- other legislation relevant to the operation of the Drug Premises Act, such as the Drug Misuse and Trafficking Act 1985
- an overview of similar legislative provisions in other Australian jurisdictions and
- an overview of the new drug move-on powers, and similar provisions in other jurisdictions.

## 3.1. The Police Powers (Drug Premises) Act

The Police Powers (Drug Premises) Act gives police powers in respect of drug houses, referred to in the legislation as drug premises. The Act enables police to apply for a warrant to search suspected drug premises and creates offences relating to drug premises.

The Act stipulates that drug premises are “any premises [that] are being used for the unlawful supply or manufacture of any prohibited drug”.<sup>76</sup> The definition of premises in the Act is:

*“premises” includes any structure, building, aircraft, vehicle, vessel or place (whether built upon or not), and any part of any such structure, building, aircraft, vehicle, vessel or place.*<sup>77</sup>

According to this definition, it is possible for a flat, a house, a car or a parking lot<sup>78</sup> to be considered drug premises.

The Act defines a prohibited drug as:

*a substance that is a prohibited drug within the meaning of the Drug Misuse and Trafficking Act 1985, but **does not include cannabis leaf, cannabis oil or cannabis resin** [emphasis added].*<sup>79</sup>

Section 11 of the Act provides eight indicia to which regard may be had in determining if premises are being used for the unlawful supply or manufacture of drugs:

- evidence that a police officer authorised by law to enter the premises was wilfully prevented from, or obstructed or delayed in, entering or re-entering those premises or any part of those premises,*
- evidence of the external or internal construction of the premises, including any external or internal door of, or means of access to, those premises that is found likely to have been fitted with a bolt, bar, chain, or any means or device for the purpose of preventing, delaying or obstructing the entry or re-entry into those premises of such a police officer or any other person, or for giving an alarm in case of such entry or re-entry,*
- evidence of a person acting as a lookout to warn persons on the premises of the approach of police officers or other persons,*
- evidence that there was found on the premises, or in the possession of a person on those premises, any syringe or other means or device used in the supply, manufacture or use of a prohibited drug,*
- evidence that there was found on the premises, or in the possession of a person on the premises, a firearm or prohibited weapon the possession of which is unlawful,*
- evidence that there was found on those premises any documents or other records, including computer records, that appear to have been kept or used in connection with the unlawful supply or manufacture of a prohibited drug,*
- evidence that there was found on the premises any large amount of money that is not accounted for by the owner or occupier of the premises,*
- evidence that there were found on those premises persons who appeared to be affected by a prohibited drug.*<sup>80</sup>

<sup>76</sup> Police Powers (Drug Premises) Act, s. 5(1).

<sup>77</sup> Police Powers (Drug Premises) Act, s. 3.

<sup>78</sup> It is most likely that the Act was intended for use on “enclosed” premises. However, because the definition of premises in section 3 of the Act also includes a “place (whether built upon or not)”, the Act could also apply to a “place” such as a parking lot.

<sup>79</sup> Police Powers (Drug Premises) Act, s. 3.

<sup>80</sup> Police Powers (Drug Premises) Act, s. 11(2).

It is important to note that police are not limited to these indicia in determining if premises are drug premises.<sup>81</sup> Regard may also be had to other evidence, such as a series of undercover drug buys conducted by police from the premises or information from a police informant that drug dealing is taking place at a particular house.

Another significant feature of the legislation is that premises may still be considered to be drug houses whether or not drugs are found on the premises. According to section 10 of the Act:

*... it is not necessary to prove that the person had a prohibited drug in his or her possession or that a prohibited drug was found on any premises involved in the offence.*<sup>82</sup>

This aspect of the legislation was intended to enable police to lay charges in instances when there was evidence to suggest that drug supply or manufacture was taking place, but no prohibited drugs were located.

### 3.1.1. Drug premises search warrants<sup>83</sup>

The Drug Premises Act creates a new type of search warrant that authorises police to enter and search premises if they have reasonable grounds for believing that the premises are being used for the unlawful manufacture or supply of a prohibited drug.<sup>84</sup>

In order to apply for a drug premises search warrant, police must first gather sufficient evidence to satisfy an authorised justice<sup>85</sup> that police have reasonable grounds for believing premises are drug premises.<sup>86</sup> For instance, this evidence may comprise police intelligence reports about suspected drug dealing or evidence of undercover controlled drug buys<sup>87</sup> from the premises.

Applications for search warrants are usually presented by a police officer in person before a local magistrate, though there are provisions in the Search Warrants Act that allow police to apply for search warrants by telephone.<sup>88</sup>

It is important to note that a drug premises search warrant can only be applied for by a police officer of or above the rank of sergeant. This is not a requirement for other types of search warrants issued under the Search Warrants Act, which can be applied for by any police officer.<sup>89</sup>

The Search Warrants Act provides guidance for an authorised justice in determining if a search warrant should be issued. An authorised justice is required to consider the reliability of the information on which the application is based, including the nature of the source of the information.<sup>90</sup> If the authorised justice is satisfied that there are reasonable grounds for doing so, the search warrant will be issued authorizing police to enter and search the premises.<sup>91</sup>

Most of the police powers that relate to the execution of search warrants, including those issued under the Drug Premises Act, are contained in the Search Warrants Act. However, the Drug Premises Act creates some additional powers of entry that are not provided by the Search Warrants Act. For the purposes of executing a drug premises search warrant, a police officer may:

- (a) *pass through, from, over or along any other land or building for the purposes of entering the premises, and*
- (b) *break open doors, windows or partitions, and*
- (c) *do such other acts as may be necessary.*<sup>92</sup>

<sup>81</sup> *Police Powers (Drug Premises) Act*, s. 11(2).

<sup>82</sup> *Police Powers (Drug Premises) Act*, s. 10.

<sup>83</sup> *Police Powers (Drug Premises) Act*, s. 5(1).

<sup>84</sup> *Police Powers (Drug Premises) Act*, s. 5(1).

<sup>85</sup> According to the *Search Warrants Act*, an “authorised justice” is defined as a local magistrate, or a justice of the peace who is a clerk of a local court or the registrar of the Drug Court, or a justice of the peace who is employed by the Department of Courts Administration who has been declared an authorised justice for the purposes of the Act. *Search Warrants Act*, s. 3.

<sup>86</sup> *Police Powers (Drug Premises) Act*, s. 5(1) and s. 5(2).

<sup>87</sup> Controlled drug buys are conducted according to the *Law Enforcement (Controlled Operations) Act 1997* that regulates a range of “controlled operations” that are conducted for purposes such as obtaining evidence of criminal activity or conduct. This Act is discussed further below.

<sup>88</sup> See *Search Warrants Act*, s. 12.

<sup>89</sup> *Search Warrants Act*, s. 5(1).

<sup>90</sup> *Search Warrants Act*, s. 12A(2)(a).

<sup>91</sup> *Police Powers (Drug Premises) Act*, s. 5(2).

<sup>92</sup> *Police Powers (Drug Premises) Act*, s. 6.

Once police have entered the suspected drug premises, according to section 7 of the Act, they are empowered to do any or all of the following:

- (a) search any person on the premises, and
- (b) arrest or otherwise proceed against any person on the premises, and
- (c) seize any firearm or other thing found on the premises that the police officer has reasonable grounds for believing is connected with an offence, and
- (d) without limiting paragraph (c), seize any prohibited drug and money found on the premises and any syringe or other thing that is kept or used in connection with, or that relates to, any activity prohibited by or under the Drug Misuse and Trafficking Act 1985, and
- (e) require any person on the premises to state his or her full name and residential address.<sup>93</sup>

### 3.1.2. Offences created by the Drug Premises Act

There are several key offences that are created by the Drug Premises Act.

Section 12 of the Act provides:

*12. Offence of entering, or being on, drug premises*

- (a) *A person who is found on, or who is found entering or leaving, drug premises is guilty of an offence.*<sup>94</sup>

Secondly, the Act includes the offence of allowing premises to be used as drug premises. Section 13 of the Act provides:

*A person who is the owner or occupier of any premises must not knowingly allow the premises to be used as drug premises.*<sup>95</sup>

The third key offence in the Act is the offence of organizing, conducting or assisting drug premises. Section 14(1) of the Act provides:

*A person must not organise or conduct, or assist in organizing or conducting, any drug premises.*

A person cannot be convicted of these offences in the Drug Premises Act unless it is first proven that premises are drug premises. The Act reads as follows:

*A court must not find a person guilty of an offence against this Part unless the prosecution satisfies the court beyond a reasonable doubt that at the time the offence is alleged to have been committed any premises involved in the offence were being used for the unlawful supply or manufacture of a prohibited drug.*<sup>96</sup>

In determining whether premises were used for the purposes of drug manufacture or supply, a court may have regard to any or all of the indicia in section 11 of the Act. However, the court is not limited to these indicia in determining if premises are drug premises.

On certain matters relevant to determining whether the offences of being found on drug premises and of organising drug premises have been committed, the onus of proof rests on the accused. For example, section 12(2) of the Act provides that:

- (2) *A person is not guilty of an offence under this section if the person satisfies the court that he or she was on, or was entering or leaving, the drug premises for a lawful purpose, or with a lawful excuse.*<sup>97</sup>

Therefore, if a person is found on, entering or leaving drug premises, under section 12(2) they have a statutory defence available to them if they can prove that they had a lawful purpose or excuse to be on the premises. If a person is charged under section 14 with organising, conducting, or assisting in organising or conducting drug premises, they also have a statutory defence available to them. Subsection 14(3) stipulates that a person cannot be found guilty of this offence if they satisfy the court that they did not know and could not reasonably be expected to have known, that the premises were drug premises.<sup>98</sup> The standard to which the accused must establish their

<sup>93</sup> *Police Powers (Drug Premises) Act*, s. 7.

<sup>94</sup> *Police Powers (Drug Premises) Act*, s. 12(1).

<sup>95</sup> *Police Powers (Drug Premises) Act*, s. 13.

<sup>96</sup> *Police Powers (Drug Premises) Act*, s. 11(1).

<sup>97</sup> *Police Powers (Drug Premises) Act*, s. 12 (2).

<sup>98</sup> *Police Powers (Drug Premises) Act*, s. 14 (3).

defence is on the balance of probabilities, rather than the higher threshold of beyond reasonable doubt. The reversal of the onus of proof in these two offences was one of the most controversial aspects of the Drug Premises Act, and is discussed more fully later in this report.

However, for an owner or occupier<sup>99</sup> to be found guilty of allowing premises to be used as drug premises, the prosecution must prove that the owner/occupier knowingly allowed their premises to be used for this purpose. Therefore, unlike the two offences discussed above, the onus of proof is not reversed. In order to successfully prosecute a person for this offence, there must be some act or conduct that proves that the defendant had this knowledge. For the purposes of this section, a person assists in organising or conducting drug premises if, for example, the person acts as a lookout, door attendant or guard in respect of any premises that are organised or conducted as drug premises.

In addition, the Drug Premises Act amended the criminal assets confiscation provisions contained in the Criminal Assets Recovery Act 1990 so that these provisions apply in relation to a second or subsequent offence of allowing premises to be used as drug premises.<sup>100</sup> The Criminal Assets Recovery Act provides for the restraining or confiscation of assets, and an order to do so can be granted by the Supreme Court.<sup>101</sup>

### 3.1.3. Other offences in the Drug Premises Act

Several other offences in the Drug Premises Act relate to the obstruction of police during the execution of the search warrant. Section 9 of the Act provides:

- (a) *If a police officer is authorised under this Part to enter any premises, a person must not,*
- (b) *wilfully prevent the officer from entering or re-entering those premises or any part of those premises, or*
- (c) *wilfully obstruct or delay the officer from entering or re-entering those premises or any part of those premises, or*
- (d) *give an alarm or cause an alarm to be given for the purpose of:*
  - (i) *notifying another person of the presence of the officer, or*
  - (ii) *obstructing or delaying the officer from entering or re-entering those premises or any part of those premises.*<sup>102</sup>

It is also an offence under the Drug Premises Act for a person to fail to give their name and address to police.<sup>103</sup> It is important to note that it is not necessary for the prosecution to prove that premises are drug premises for a person to be convicted of these offences.

### 3.1.4. Penalties for offences in the Drug Premises Act

Cases involving offences under the Drug Premises Act are heard by a magistrate in a local court, except in relation to second or subsequent offences under the key provisions in the Act. These offences attract higher penalties (see table below), and are dealt with on indictment unless an election is made under the Criminal Procedure Act 1986 for the matter to be heard by a magistrate in a local court.<sup>104</sup> If such an election is made, the maximum penalty that can be imposed is a two year term of imprisonment, or a fine of \$11,000.

<sup>99</sup> "Occupier" is defined to include a lessee or sublessee who is not the owner of the premises: *Police Powers (Drug Premises) Act* s 3 (1).

<sup>100</sup> *Criminal Assets Recovery Act*, s. 6 (2) (e1) and s.6 (4).

<sup>101</sup> For a discussion of the provisions of the *Criminal Assets Recovery Act*, including its application to drug offences, see Peter Zahra, Robert Arden, Mark Ierace and Beverly Schurr, *Drug Law in NSW*, Second Edition, Federation Press, Sydney, 1999 pp. 315-342.

<sup>102</sup> *Police Powers (Drug Premises) Act*, s. 9.

<sup>103</sup> *Police Powers (Drug Premises) Act*, s. 9.

<sup>104</sup> *Police Powers (Drug Premises) Act*, s. 15.

The table below sets out the penalties for offences in the Drug Premises Act.

**Table 3. The Police Powers (Drug Premises) Act, drug premises offences and penalties**

Offence group	Offence	Penalty
Drug premises offences	Being on, entering or leaving drug premises <sup>105</sup>	First offence: 12 months imprisonment, or a fine of \$5,500, or both. Second offence: 5 years imprisonment, or a fine of \$55,000, or both.
	Allowing use of premises as drug premises <sup>106</sup>	
	Organising drug premises <sup>107</sup>	
Offences that relate to obstructing a police officer executing a search warrant	Wilfully prevent a police officer from entering or re-entering premises <sup>108</sup>	12 months imprisonment or a fine \$5,500, or both
	Wilfully obstruct or delay a police officer from entering or re-entering premises <sup>109</sup>	
	Give alarm for the purpose of either notifying another person of the presence of police, or delaying police entry <sup>110</sup>	
	Fail to provide, without a reasonable excuse, full name and address to police <sup>111</sup>	Maximum penalty is a fine of \$5,500 <sup>112</sup>

## 3.2. Search warrants, drug search powers and other relevant legislation in NSW

It is important to place the Drug Premises Act in the context of legislation that is often used in conjunction with this Act. Aspects of these laws that are relevant to the operation of the Drug Premises Act are summarised below.

It is also noted that two other drug laws, the Police Powers (Internally Concealed Drugs) Act 2001 and the Police Powers (Drug Detection Dogs) Act 2001, have come into operation since the commencement of the Drug Premises Act. The NSW Ombudsman has a review role in relation to these laws.

### 3.2.1. The Search Warrants Act 1985

In NSW, the principal legislation that regulates the application, issuing and execution of search warrants is the Search Warrants Act. As noted above, many of the procedures that apply to warrants issued under the Drug Premises Act are contained in the Search Warrants Act.

Section 5(1) of the Search Warrants Act authorises police to apply for a search warrant if they have reasonable grounds for believing that any of the following things are, or will be, on the premises within 72 hours:

- (a) a thing connected with a particular indictable offence,
- (b) a thing connected with a particular firearms offence,
- (b1) a thing connected with a prohibited weapons offence,
- (c) a thing connected with a particular narcotics offence, or
- (d) a thing stolen or otherwise unlawfully obtained.<sup>113</sup>

<sup>105</sup> Police Powers (Drug Premises) Act, s. 12.

<sup>106</sup> Police Powers (Drug Premises) Act, s. 13.

<sup>107</sup> Police Powers (Drug Premises) Act, s. 14.

<sup>108</sup> Police Powers (Drug Premises) Act, s. 9 (1) (a).

<sup>109</sup> Police Powers (Drug Premises) Act, s. 9 (1) (b).

<sup>110</sup> Police Powers (Drug Premises) Act, s. 9 (1) (c).

<sup>111</sup> Police Powers (Drug Premises) Act, s. 9 (2).

<sup>112</sup> Police Powers (Drug Premises) Act, s. 9 (2).

<sup>113</sup> Search Warrants Act, s. 5 (1).

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The Search Warrants Act allows police to apply for a search warrant that relates to particular things that they believe may be on the premises. For example, in drug investigations, police may apply for a warrant under the Search Warrants Act if they believe that a thing connected with a particular narcotics offence, such as a quantity of heroin, will be on the premises in the next 72 hours.

The main difference between this Act, and the Drug Premises Act, is that the Drug Premises Act allows police to apply for a warrant when they believe that a premises is being used for a particular purpose. According to the Drug Premises Act, police are not required to have reasonable grounds for believing a particular thing is on the premises in order to apply for a search warrant.

During the review period, there were occasions in which police chose to apply for a warrant to search drug premises under the Search Warrants Act, rather than the Drug Premises Act. We discuss reasons why this occurred later in this report.<sup>114</sup>

### 3.2.2. The Drug Misuse and Trafficking Act 1985

The principal drug legislation in NSW is the Drug Misuse and Trafficking Act 1985 (the Drug Misuse and Trafficking Act).<sup>115</sup> Supply, possession, manufacturing and a number of other offences relating to prohibited drugs are contained within this Act. During the review period, police often laid charges under the Drug Misuse and Trafficking Act against persons found on drug premises.

A prohibited drug is any substance included in Schedule 1 of the Drug Misuse and Trafficking Act, and includes substances like heroin, cocaine, methylamphetamine and cannabis.<sup>116</sup> This Act provides graduated penalties according to the quantity of the particular prohibited drug that is involved in an offence, so offences involving larger quantities of prohibited drugs attract more serious penalties.<sup>117</sup> Other offences contained in the Drug Misuse and Trafficking Act include ongoing supply which attracts a maximum penalty of 20 years. This charge was sometimes laid if police conducted three or more undercover drug purchases from an occupant of a suspected drug premises.<sup>118</sup>

Like the Drug Premises Act, the Drug Misuse and Trafficking Act also contains search powers in relation to prohibited drugs. These powers enable police to conduct searches of people, vehicles, vessels and aircraft without a warrant. Police may stop, search and detain any person who the officer reasonably suspects of possessing a prohibited drug or plant, or any vehicle which the officer reasonably suspects of containing a prohibited plant or drug.<sup>119</sup> An officer of the rank of sergeant or above may also enter and search any vessel or aircraft which the officer reasonably suspects of containing any prohibited plant or prohibited drug.<sup>120</sup>

### 3.2.3. Law Enforcement (Controlled Operations) Act 1997

Undercover police sometimes conducted controlled drug buys from suspected drug premises to obtain evidence to apply for a drug premises search warrant.

The Law Enforcement (Controlled Operations) Act 1997 (the Controlled Operations Act) regulates controlled operations. A controlled operation can be conducted for a range of purposes, including “obtaining evidence of criminal activity”.<sup>121</sup>

This Act enables police to apply to the Commissioner for the authority to conduct a controlled operation.<sup>122</sup> Applications must include information including a plan of the proposed operation and the nature of the criminal activity that it relates to.<sup>123</sup> According to the Act, an authority to conduct a controlled operation must not be granted unless the Commissioner is satisfied that:

- (a) *there are reasonable grounds to suspect that criminal activity or corrupt conduct has been, is being or is about to be conducted in relation to matters within the administrative responsibility of the agency,*
- (b) *that the nature and extent of the suspected criminal activity or corrupt conduct are such as to justify the conduct of a controlled operation,*

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<sup>114</sup> See chapter, “Drug Premises Search Warrants”.

<sup>115</sup> Supply, possession, and a number of other offences relating to prohibited drugs are contained within the *Drug Misuse and Trafficking Act*.

<sup>116</sup> *Drug Misuse and Trafficking Act*, s. 3. Offences that relate to the supply and distribution of pharmaceuticals and poisons are contained in the *Poisons and Therapeutic Goods Act 1966*. This Act regulates “prescribed restricted substances” such as testosterone.

<sup>117</sup> Peter Zahra, Robert Arden, Mark Ierace and Beverly Schurr, *Drug Law in NSW, Second Edition, Federation Press, Sydney, 1999*, p. 3.

<sup>118</sup> *Drug Misuse and Trafficking Act*, s. 25A.

<sup>119</sup> *Drug Misuse and Trafficking Act* s. 37(4).

<sup>120</sup> *Drug Misuse and Trafficking Act* s. 37(2), (3)

<sup>121</sup> *Law Enforcement (Controlled Operations) Act*, s. 3.

<sup>122</sup> *Law Enforcement (Controlled Operations) Act*, s. 5.

<sup>123</sup> *Law Enforcement (Controlled Operations) Act*, s. 5 (2A).

<sup>123</sup> *Law Enforcement (Controlled Operations) Act*, s. 5 (2A).



- (c) *that the nature and extent of the proposed controlled activities are appropriate to the suspected criminal activity or corrupt conduct,*
- (d) *that the proposed controlled activities will be capable of being accounted for in sufficient detail to enable the reporting requirements of this Act to be fully complied with.*<sup>124</sup>

Written authorities may be granted authorizing the conduct of a controlled operation for a period of up to six months.<sup>125</sup>

### 3.2.4. Restricted Premises Act 1943

Prior to the enactment of the Drug Premises Act, police attempted to use the Restricted Premises Act (formerly known as the Disorderly Houses Act) to deal with drug premises. Under this Act, police may apply to the Supreme Court for an order to declare that premises is a disorderly house. While the Restricted Premises Act is the main legislative instrument that regulates brothels in NSW, the Act also contains provisions that relate to disorderly houses that are being used for drug supply.

One of the grounds upon which premises may be declared a disorderly house is if a drug is unlawfully sold or supplied on or from the premises or is likely to be sold again on or from the premises. Two of the indicia that may be used as evidence that premises is a disorderly house are similar to those in the Drug Premises Act that relate to fortifications and items used in connection with drug supply.<sup>126</sup>

A police officer of or above the rank of sergeant can apply to the Supreme Court or a District Court for a disorderly house declaration to be made. We understand that NSW Police believed that the requirement that an application must be made to the Supreme Court rendered the legislation impractical in relation to drug premises.

Like the Drug Premises Act, the Restricted Premises Act also requires that an officer of or above the rank of sergeant make an application to a court in order to exercise the powers in the Act. If the Supreme Court determines that there are reasonable grounds for suspecting that a premises is a disorderly house, a police officer may fix a notice to the premises. While the disorderly house declaration is in force, police are able to search the premises without a search warrant. Like the Drug Premises Act, this legislation also contains offences that may render owners and occupiers liable for their involvement in the disorderly house.<sup>127</sup>

A significant amendment was made to the Restricted Premises Act in 2002 that provides for the closure of commercial premises that are being used for drug supply for a period of up to 72 hours. These powers were intended to assist police in dealing with premises like the so-called "cannabis cafes" in Kings Cross. A magistrate may, on an application made by a police officer of or above the rank of sergeant, issue an order under Section 15C of the Act that the owner or the occupier of a premises close the premises for up to 72 hours if the officer provides reasonable grounds for suspecting that the premises are being used:

- (a) *to supply prohibited drugs unlawfully to persons, or*
- (b) *to keep prohibited drugs to enable their unlawful supply to persons, or*
- (c) *to make arrangements for the unlawful supply of prohibited drugs to persons at another place.*<sup>128</sup>

Once issued, a declaration that a commercial premises is a restricted premises authorises police to enter and search the premises without a warrant at any time while the declaration is in force.

## 3.3. What similar powers operate elsewhere in Australia?

Since July 2001 when the Drug Premises Act commenced in NSW, similar laws have been passed in three other jurisdictions in Australia.

In 2002, legislation was passed in the Northern Territory that enables police to apply for Drug Premises Orders. In the same year, the Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002 was passed in Western Australia, and in 2003, the Statutes Amendment (Anti-Fortification) Act was passed in South Australia.

Each of these laws is discussed below.

<sup>124</sup> *Law Enforcement (Controlled Operations) Act*, s. 6(3).

<sup>125</sup> *Law Enforcement (Controlled Operations) Act*, s. 8 (2)(g).

<sup>126</sup> *Restricted Premises Act*, s. 12.

<sup>127</sup> *Restricted Premises Act*, sections 8 and 9.

<sup>128</sup> *Restricted Premises Act*, s. 15C.

### 3.3.1. Drug premises powers in the Northern Territory

In 2002, the Northern Territory amended the Misuse of Drugs Act to enable police to make an application for Drug Premises Orders. This legislation applies to residential, commercial and licensed premises. In Parliament, the Minister for Justice and Attorney General, Dr Toyne, explained why the legislation had been introduced:

*[the law] targets those suppliers who are able to sustain a drug business network primarily through rented premises. Police advise that dealers in these premises usually operate by having possession of small amounts of prohibited drug at one time so that they can deliberately avoid being caught with a trafficable amount...*

*These dealers set up sales which allow the purchaser and other dealers to attend at the house briefly, purchase the drug and leave. If police attend the premises and charge a person, that person leaves the premises, but the business of dealing is simply taken over by the next person. The premises themselves continue by the strength of their reputation to be the drug premises... Consequently, police have been left with an operational problem concerning proper enforcement on these premises.<sup>129</sup>*

Unlike similar laws in other states, including NSW, the Northern Territory legislation is not directed toward fortified premises. Instead, the impetus for the introduction of the law appears to have been the resilient nature of drug supply operations from premises. Like NSW, however, police in the Northern Territory had also reported difficulties in proceeding against people found on drug premises for drug offences under existing legislation.

The amendments to the Misuse of Drugs Act established two grounds on which police could rely to apply for a Drug Premises Order:

- the presence of indicators that premises are being used for supply or
- that police suspect the supply of drugs is taking place at the premises and dangerous drugs have been found on three separate occasions within a 12 month period.<sup>130</sup>

In respect of indicators that premises are being used for supply, section 11C(1) of the Act sets out 12 indicators that residential premises<sup>131</sup> are being used to supply dangerous drugs:

- (a) *police being prevented, obstructed or delayed from entering or re-entering the premises;*
- (b) *the presence of a lookout on or near the premises;*
- (c) *the presence on the premises of things used in the supply, manufacture or use of a dangerous drug;*
- (d) *the presence on the premises, or in the possession of a person on the premises, of a firearm;*
- (e) *the presence of documents or records used in connection with the supply or manufacture of a dangerous drug;*
- (f) *amounts of money on the premises that cannot be satisfactorily accounted for by a resident of, or an owner or landlord of, the premises;*
- (g) *the presence at the premises of a person or persons who are, or who appear to be, under the influence of a dangerous drug;*
- (h) *excessive, frequent or suspicious vehicular or pedestrian traffic to or from the premises;*
- (i) *the presence on the premises, or in the vicinity of the premises, of persons known to be involved in the sale or distribution of a dangerous drug;*
- (j) *(the presence on the premises of property reasonably suspected of being stolen or of being exchanged in return for a dangerous drug;*
- (k) *dangerous drugs have been found on the premises on one or more occasions;*
- (l) *other indications such as the construction of the premises, or an internal or external door on the premises, involving a device for preventing, delaying or obstructing entry or for giving alarm.<sup>132</sup>*

<sup>129</sup> Dr Toyne, Justice and Attorney General, Northern Territory Parliamentary Debates, 14 May 2002, <http://notes.nt.gov.au/lant/hansard>.

<sup>130</sup> *Misuse of Drugs Act (NT)*, s. 11D.

<sup>131</sup> As noted above, the *Misuse of Drugs Act (NT)* also applies to commercial or liquor licence premises and Section 11C (2) sets out some of the same criteria to indicate that dangerous drugs are being supplied at or from premises of these types. Criteria include: obstructing police entry to the premises, the presence of a thing connected with the supply, manufacture or use of a drug on the premises, or the presence of a firearm, amounts of money, stolen property or documents used in connection with drug supply.

<sup>132</sup> *Misuse of Drugs Act (NT)* s.11C (1).

The Act contains four additional indicia of drug premises to those contained in section 11 of the Drug Premises Act. These concern suspicious vehicular or pedestrian traffic, the presence of people known for drug supply on, or in the vicinity of the premises, previous finds of dangerous drugs and stolen property that may have been exchanged for drugs.

Police may also seek a Drug Premises Order when they reasonably suspect that the supply of drugs is taking place at the premises, and drugs have been found on the premises on three separate occasions within a 12 month period. To obtain an order in these circumstances, police must have made a record of each seizure and given the affected person, such as the owner, landlord or tenant, a warning at each seizure.<sup>133</sup>

An application for a Drug Premises Order is made to a local court with no notice afforded to the person or persons to be affected by the order.<sup>134</sup> The hearing is conducted in camera.<sup>135</sup> A finding that the premises has been used for the supply of drugs may be made even though no finding of guilt has been made on the supply or possession of drugs from the premises.

A Drug Premises Order may be made if the court is satisfied on the balance of probabilities that the premises are being used for the supply of drugs.<sup>136</sup> Once a Drug Premises Order is issued, police are required to serve a copy of the order on the owner, landlord or tenant within seven days.<sup>137</sup> If the owner, landlord or tenant objects to the order, they have seven days in which to apply for a revocation of the order.<sup>138</sup>

If the order is not revoked, a notice is affixed at the entry of the premises stating it to be a declared drug premises, and any attempt to alter or tamper with the notice will be treated as an offence, punishable by a fine of 200 penalty units or two years imprisonment.<sup>139</sup> The following is a photograph of the notice affixed to the first premises in Darwin affected by such an order:

**Figure 1. Photograph of notice affixed to first affected premises in Darwin**

Source: "Darwin's First Drug House" ABC Local Radio Darwin 3 January 2003 <http://www.abc.net.au/nt/stories/s757123.htm>



Once the notice is affixed, police have the power to enter, search, search persons and seize objects without warrant for 12 months after the order is issued (unless the order is revoked in the meantime).<sup>140</sup>

The Act provides that police may obtain a restraining order against a person who has committed a breach of the peace on drug premises.<sup>141</sup> Like the Drug Premises Act, there are also offences for obstructing police from entering drug premises and for warning or giving alarm to others that police are searching drug premises.<sup>142</sup> It is also an offence for a person to fail to give their name and address to police.<sup>143</sup> A person convicted of possession in declared drug premises can be given an aggravated penalty under the Act.<sup>144</sup> The Act also makes accelerated eviction procedures available to landlords.<sup>145</sup>

Any person affected by an order may apply to the court for the order to be removed. The court can revoke the order if it is satisfied that the premises are no longer being used as drug premises.<sup>146</sup> Otherwise, an order remains in effect for twelve months after it is issued.<sup>147</sup>

<sup>133</sup> *Misuse of Drugs Act (NT)* ss.11D, 11E, 11F & 11G

<sup>134</sup> *Misuse of Drugs Act (NT)* s.11H(1)

<sup>135</sup> *Misuse of Drugs Act (NT)* s.11J(3)

<sup>136</sup> *Misuse of Drugs Act (NT)* s.11K(1)

<sup>137</sup> *Misuse of Drugs Act (NT)* s.11N

<sup>138</sup> *Misuse of Drugs Act (NT)* s.11P

<sup>139</sup> *Misuse of Drugs Act (NT)* s.11Q

<sup>140</sup> *Misuse of Drugs Act (NT)* s.11R

<sup>141</sup> *Misuse of Drugs Act (NT)*, s.11T.

<sup>142</sup> *Misuse of Drugs Act (NT)*, s.11S.

<sup>143</sup> *Misuse of Drugs Act (NT)* s.11S

<sup>144</sup> Northern Territory Government Fact Sheet: Misuse of Drugs Act – Drug House Laws.

<sup>145</sup> *Misuse of Drugs Act (NT)* s.11U

<sup>146</sup> *Misuse of Drugs Act (NT)*, s.11P

<sup>147</sup> *Misuse of Drugs Act (NT)* s.11M

In the first twelve months of operation, Northern Territory Police have issued 68 first warning/seizure notices; nine second warning/seizure notices; and four third warning/seizure notices. Two homes have been the subject of Drug Premises Orders, which in each instance were imposed by the court after police issued three warning/seizure notices. According to the Government, a further 18 premises were closed or ceased operating after police raids.<sup>148</sup>

There are some key differences between the Northern Territory legislation and the Drug Premises Act in NSW. First, the Northern Territory legislation does not have offences comparable to the key offences in the Drug Premises Act of being found on drug premises, organising or assisting drug premises or allowing a premises to be used as drug premises. Second, the Northern Territory legislation provides for a search of declared drug premises without a warrant.<sup>149</sup>

### 3.3.2. Western Australia's Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002

In 2002, the Western Australian Parliament passed the Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002. This legislation was aimed at outlaw motorcycle gangs (OMCGs) that had been identified as a significant criminal milieu in Western Australia in recent years and at other forms of criminal activity. On introducing the legislation, the Premier, Dr Gallop, stated:

*Our primary targets are drug traffickers, outlaw motorcycle gangs and others associated with organised crime. These people have a complete disregard for the law.*<sup>150</sup>

According to the Premier, a central objective of the law is to "provide the Commissioner of Police with greater investigatory powers".<sup>151</sup> One aspect of these increased powers is in relation to fortified premises. Police argued that the fortification of premises occupied by suspected criminals, particularly OMCG clubhouses, was a significant obstacle in the execution of timely searches.

The Act allows the Police Commissioner to seek approval from a special commissioner for the issuing of a fortification warning notice. This notice may be issued where the special commissioner is:

*... satisfied on the balance of probabilities that there are reasonable grounds for suspecting that the premises to which it relates are-*

*(a) heavily fortified; and*

*(b) habitually used as a place of resort by members of a class of people a significant number of whom may reasonably be suspected to be involved in organised crime.*<sup>152</sup>

Premises are defined by the Act as heavily fortified if there are fortifications "to an extent or of a nature that it would be reasonable to regard as excessive for premises of that kind".<sup>153</sup> If so satisfied, a special commissioner may issue a fortification warning notice to the owner and occupier of the premises.<sup>154</sup> This notice gives warning that a fortification removal notice may be issued within a period of 14 days. If the 14 day period has elapsed and the fortifications have not been removed, a fortification removal notice may be issued that states that within seven days, the fortifications at the premises:

*... must be removed or modified to the extent necessary to satisfy the Commissioner of Police that the premises are no longer heavily fortified.*<sup>155</sup>

<sup>148</sup> Media release: "Drug Laws one year on have hit the target". Issued by Dr Peter Toyne, Minister for Justice. 19 August 2003.

<sup>149</sup> *Misuse of Drugs Act (NT)*, s. 11M.

<sup>150</sup> The Hon. Dr Gallop. Hansard of the Legislative Assembly of Western Australia. 6 November 2001. p. 5038.

<sup>151</sup> *Ibid*

<sup>152</sup> *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*, s. 58.

<sup>153</sup> *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*, s. 57 (2).

<sup>154</sup> *Ibid*

<sup>152</sup> *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*, s. 58.

<sup>154</sup> It is not clear from Dr Gallop's second reading speech how the statutory notification period of 14 days achieves the element of surprise apparently desired by police when wanting to search fortified premises occupied by people involved in organised crime.

<sup>155</sup> *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*, s. 63.

A fortification removal notice is reviewable by the Supreme Court.

If the fortifications are not removed within seven days, police may remove or modify the fortifications on the premises. To do so, they may enter and secure the premises without a warrant and are authorised to use any reasonable force and equipment necessary. If the Police Commissioner removes the fortification, the net costs of removal may be recovered from the owner of the premises as a debt.<sup>156</sup>

### 3.3.3. South Australia's Statutes Amendment (Anti-Fortifications) Act 2003

In 2003, the South Australian Government passed the Statutes Amendment (Anti-Fortifications) Act 2003 (the Anti-Fortifications Act), inserting provisions into the South Australian Summary Offences Act 1953 in relation to fortified premises. The legislation was intended to deal with similar issues to the Western Australian legislation, as some of the OMCGs of concern operate across both states.

The South Australian law appears to have been introduced to overcome the same operational difficulties faced by police in NSW and Western Australia in gaining entry to fortified premises. However, like the Western Australian Act, the South Australian law is aimed at OMCG clubhouses, rather than at premises that are specifically used for illicit drug manufacture or supply. The South Australian Attorney General explained the impetus for the introduction of the legislation in the following way:

*This bill ... [is to] give effect to the government's election promise to enact laws to prevent criminal organisations such as those known as outlaw motorcycle gangs fortifying their clubrooms and other premises to prevent police access and to give the police the power in appropriate circumstances to require the removal or modification of fortifications where they have been constructed ... If police officers cannot swiftly execute search warrants, for example, the criminals who occupy these fortresses are given an opportunity to conceal or destroy evidence of their criminal behaviour.<sup>157</sup>*

The Anti-Fortifications Act provides that local councils in receipt of development applications forward these to the Commissioner for Police if they believe that they involve the construction of fortifications. In the Act, fortifications are defined as:

*... any security measure that involves a structure or device forming part of, or attached to, premises that -*

- (a) is intended or designed to prevent or impede police access to the premises; or*
- (b) has, or could have, the effect of preventing or impeding police access to the premises and is excessive for the particular type of premises.<sup>158</sup>*

If the Commissioner of Police determines that the application, or part of it, involves the creation of fortifications, the council must refuse the application, or the part of the application that involves the construction of fortifications.<sup>159</sup>

The legislation also enables police to deal with premises where fortifications already exist by permitting the Commissioner to apply to the magistrate's court for a fortification removal order. Such an order will be issued by the court if the fortifications are in contravention of relevant planning laws, or if there are reasonable grounds to believe the premises are being, have been, or are likely to be used:

- (a) for or in connection with the commission of a serious criminal offence, or*
- (b) to conceal evidence of a serious criminal offence, or*
- (c) to keep the proceeds of a serious criminal offence.<sup>160</sup>*

The order must state that the fortifications are to be removed or modified within a specified time period, which cannot be less than 14 days. It must be served on the occupier/s of the premises or fixed to the premises "at a prominent place at or near to the entrance".<sup>161</sup> Like the Western Australian legislation, statutory rights of appeal against the removal order are created. The Act also provides the Commissioner with powers to give effect to the orders by removing the fortifications, and to recover the costs of removal.

<sup>156</sup> The Hon. Dr Gallop, Hansard of the Legislative Assembly of Western Australia, 6 November 2001 p. 5038.

<sup>157</sup> The Hon. M.J. Atkinson, Hansard of the South Australian House of Assembly, 16 September 2003.

<sup>158</sup> *Summary Offences Act 1953*, s. 74BA.

<sup>159</sup> *Development Act 1993*, s. 37A.

<sup>160</sup> *Summary Offences Act 1953*, s. 74BB.

<sup>161</sup> *Summary Offences Act 1953*, s. 74 BD.

## 3.4. Drug move-on powers

In addition to creating new powers in respect of drug houses, the Drug Premises Act also gives police new powers to deal with the street-level drug trade. By amending section 28F of the Summary Offences Act 1988, the Act extends police powers to issue reasonable directions to people in public places. These provisions are commonly referred to as move-on powers.

According to the original move-on powers in the Summary Offences Act, police could issue a direction in instances where a person's behaviour or presence in a public place constituted obstruction, harassment or intimidation, or caused fear.<sup>162</sup> These criteria are referred to in the legislation as relevant conduct. The Drug Premises Act extends the definition of relevant conduct for which police may issue a direction to include drug related activity:

*28F. (1) A police officer may give a direction to a person in a public place if the police officer has reasonable grounds to believe that the person's behaviour or presence in the place (referred to in this section as "relevant conduct"):*

...

*(d) is for the purpose of unlawfully supplying, or intending to unlawfully supply, or soliciting another person or persons to unlawfully supply, any prohibited drug, or*

*(e) is for the purpose of obtaining, procuring or purchasing any prohibited drug that it would be unlawful for the person to possess.<sup>163</sup>*

When issuing a direction under section 28F, police must comply with certain procedural requirements. These requirements stipulate that prior to issuing a direction, a police officer must provide evidence that they are a police officer and give their name and place of duty. The officer must also give the reason for the direction and warn that failure to comply may be an offence.<sup>164</sup>

Section 28F of the Act does not provide specific guidance on what type of direction police can give, just that the direction must be reasonable in the circumstances for the purposes of:

*(b) stopping the supply, or soliciting to supply, of the prohibited drug,<sup>165</sup> or*

*(c) stopping the obtaining, procuring or purchasing of the prohibited drug.<sup>166</sup>*

Under Section 28F(6), failure to obey a reasonable direction is an offence. An offence has been committed if a police officer issues two directions to move-on, and the person continues to disobey the direction without a reasonable excuse.<sup>167</sup> It is important to note, however, that a person is only guilty of an offence if they continue to engage in the relevant conduct after the direction was issued.<sup>168</sup> No custodial penalty applies to this offence, and the maximum penalty is a fine of \$220.<sup>169</sup>

### 3.4.1. Move-on powers interstate

Several jurisdictions have move-on powers, though unlike the NSW legislation, these powers do not concern drug related activity in public places. The move-on powers in other jurisdictions more closely resemble the original move-on powers in the NSW Summary Offences Act that relate to creating an obstruction, intimidation or causing fear.

What is interesting about some of the laws in other jurisdictions is that they provide specific guidance to police about the type of direction they can give. This is pertinent to our review because the types of directions that were issued by police under the Drug Premises Act emerged as a key issue in this review.

<sup>162</sup> *Summary Offences Act* s 28F (a), (b) and (c).

<sup>163</sup> *Summary Offences Act*, s 28F(1) (d) and (e).

<sup>164</sup> *Summary Offences Act*, s 28F(4).

<sup>165</sup> *Summary Offences Act*, s. (3)(b).

<sup>166</sup> *Summary Offences Act*, s. 3(c).

<sup>167</sup> *Summary Offences Act*, s. 28F(6).

<sup>168</sup> *Summary Offences Act*, s. 28F(7).

<sup>169</sup> *Summary Offences Act*, s. 28F(6).

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For example, section 39(3) of the Queensland Police Powers and Responsibilities Act 2000 provides the following guidance to police:

*... a direction may require a person to do either of the following--*

- a. leave the prescribed place and not return within a stated reasonable time of not more than 24 hours;*
- b. move from a particular location for a stated reasonable distance, in a stated direction, and not return or be within the stated distance from the place for a stated reasonable time of not more than 24 hours.*<sup>170</sup>

In addition, the move-on powers in the South Australian Summary Offences Act 1953 also provide specific guidance as to what police may direct the person to do. The Act stipulates that a police officer may request that person to cease loitering, or request the persons in the group to disperse. The Act further states that a person to whom such a request is made must "leave the place and the area in the vicinity of the place in which he or she was loitering or assembled in the group".<sup>171</sup>

Similarly, the Australian Capital Territory Crime Prevention Powers Act 1998 limits the duration of the type of direction that police may give. Section 4 of the Act states that police may direct the person to leave the vicinity of the public place:

- (a) if the police officer has reasonable grounds for believing that the person is likely to engage in violent conduct while, or immediately after, leaving the vicinity by a particular route—that the person leave the vicinity by a different route (whether the route is stated or unstated);*
- (b) that the person not return to the vicinity for a stated period of not longer than 6 hours.*<sup>172</sup>

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<sup>170</sup> *Police Powers and Responsibilities Act (Qld)*, s. 39 (3).

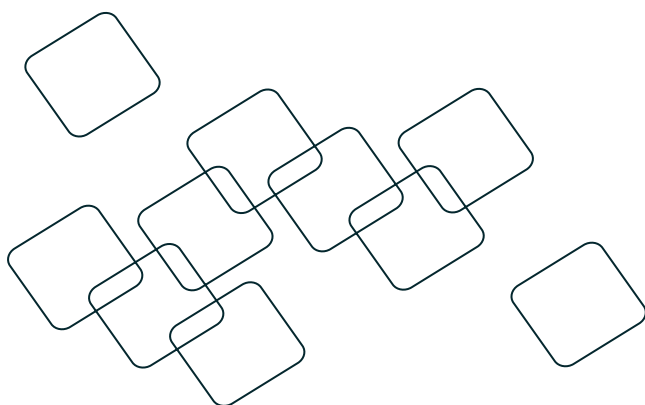
<sup>171</sup> *Summary Offences Act (SA)* s. 18(2).

<sup>172</sup> *Crime Prevention Powers Act (ACT)* s. 4.





# Part Two. Drug premises



## Chapter 4. Drug premises search warrants

Search warrants provide the legal authority for police to enter and search premises. Drug premises search warrants are a new type of search warrant that provide the authority for police to enter, and search premises where there are reasonable grounds to believe they are operating for the purposes of supplying or manufacturing prohibited drugs.

In order to obtain a search warrant, a police officer must first prepare a search warrant application.

Drug premises search warrant applications were important for us to examine because they demonstrate the basis upon which police explained that they had reasonable grounds for believing that particular premises were drug premises. In addition, concerns were expressed<sup>173</sup> that the Drug Premises Act lowered the threshold for obtaining search warrants, and that premises may be wrongly identified as drug premises.

In this chapter, we look in detail at the drug premises search warrant applications that we received from NSW Police for the purposes of our review. We also describe the process of applying for drug premises search warrants, and discuss particular issues that have been raised, such as the requirement that an officer of or above the rank of sergeant apply for the search warrant.

### 4.1. Drug premises search warrants

Unlike the Search Warrants Act, which authorises police to search for a particular thing or things,<sup>174</sup> the Drug Premises Act authorises police to search a premises if police have reasonable grounds for believing that the premises is being used for a particular purpose, the unlawful supply or manufacture of prohibited drugs.<sup>175</sup>

<sup>173</sup> These concerns were expressed in submissions we received to our discussion paper from North and North West Community Legal Service and from the East Area Tenants Service. These concerns are discussed later in this chapter.

<sup>174</sup> *Search Warrants Act*, s. 5.

<sup>175</sup> *Police Powers (Drug Premises) Act*, s. 5(1).

Before applying for a search warrant, police must gather evidence to demonstrate a reasonable belief that the premises is being used for this purpose. In the police training manual on the Drug Premises Act, the process of evidence gathering to prove that premises are drug premises is described as a two stage process: the pre-search warrant execution and post-search warrant execution phase. In relation to the pre-execution phase, police are advised to:

*... consider what evidence can be obtained to prove the premises are drug premises before entry to the premises is attempted, e.g. evidence from controlled buys<sup>176</sup> and informers, of general observations of the premises and of the people entering and leaving them.<sup>177</sup>*

Police often record their observations of people coming and going from premises, or information received from informers in intelligence reports.<sup>178</sup> These reports are referred to in search warrant applications. Any evidence of controlled buys is also likely to be included in a search warrant application. In a focus group we conducted, one police officer commented that if evidence of a controlled buy that has been conducted from a premises is included in a search warrant application, it is very easy to apply for the warrant.<sup>179</sup> If police only include information about people coming and going from premises, according to this officer, the magistrate will be reluctant to issue the search warrant because police “can’t even confirm he’s selling drugs”.<sup>180</sup>

## 4.2. Applications for search warrants

Most of the procedures followed in applying for search warrants under the Drug Premises Act are contained in the Search Warrants Act. Section 11 of the Search Warrants Act stipulates that search warrant applications must be in writing.<sup>181</sup> The Drug Premises Act stipulates that applications for search warrants must be made by a police officer of or above, the rank of sergeant.<sup>182</sup>

The applicant must state the “grounds upon which the application is being sought”.<sup>183</sup> At the time when an application for a drug premises search warrant is made, the police officer must also have reasonable grounds for believing that the premises are being “used for the unlawful supply or manufacture of any prohibited drug”.<sup>184</sup> In the High Court case of *George v Rocket*,<sup>185</sup> it was established that when a statute stipulates that there must be reasonable grounds for a state of mind it “requires the existence of facts which are sufficient to induce that state of mind in a reasonable person”.<sup>186</sup> Training material prepared at the NSW Police College advises police in determining if there are sufficient reasonable grounds for belief to apply for a search warrant that:

*In applying for a search warrant it must be clear that the police officer applying for the warrant, has an actual belief, NOT just a suspicion. This belief must have a factual basis and not [be] merely based on speculation, such that a reasonable person in the shoes of the police officer would have formed the same belief.<sup>187</sup> [original emphasis]*

To ensure adherence with the requirement that an officer’s reasonable belief has a sufficient factual basis, the importance of providing sufficient detail in a search warrant application is stressed in police instructional material on search warrants on the NSW Police Intranet. For example, in Law Notes published in 2003, police are advised that:

*... it is not enough to merely establish in your search warrant application that you hold reasonable grounds - you must include sufficient factual information in your application to satisfy the authorised justice that such grounds exist. Do not, therefore, expect the authorised justice to whom you make your application to simply “rubber stamp” your belief. Only where you are able to include, and in fact have included, sufficient facts to enable the authorised justice to form their own independent view of the existence of reasonable grounds will your application be granted.<sup>188</sup>*

<sup>176</sup> A “controlled drug buy” usually refers to the purchase of prohibited drugs by an undercover police officer from a suspected drug dealer. Controlled drug buys, and other controlled operations, are regulated by the *Law Enforcement (Controlled Operations) Act 1997*.

<sup>177</sup> NSW Police, Mandatory Continuing Police Education Scheme Package, *Police Powers (Drug Premises) Act 2001*, November 2001, p. 11.

<sup>178</sup> These intelligence reports are given a security “grading” on COPS by the officer who enters them. There are four categories of intelligence reports: restricted, confidential, secret and top secret. The grading that is assigned to each intelligence report determines whether access to a particular intelligence report is available to all police officers or if it is restricted, and if so, to what level.

<sup>179</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>180</sup> *Ibid.*

<sup>181</sup> *Search Warrants Act* s. 11(1).

<sup>182</sup> *Police Powers (Drug Premises) Act*, s. 5(1).

<sup>183</sup> *Search Warrants Act*, s. 12A(1)(b).

<sup>184</sup> *Police Powers (Drug Premises) Act*, s. 5(1).

<sup>185</sup> *George v Rocket* (1990) 170 CLR 104.

<sup>186</sup> Peter Zahra, Robert Arden, Mark Ierace and Beverly Schurr, *Drug Law in NSW*, Second Edition, Federation Press, Sydney, 1998, p. 210.

<sup>187</sup> NSW Police Intranet, *Search Warrants, Listening Devices and Telephone Intercepts Lecture*, 2002.

<sup>188</sup> NSW Police, Law Notes 6 of 2003, Making Better Search Warrant Applications- Part 3.

In the police training manual on the Drug Premises Act, specific guidance is provided about what information to include in drug premises search warrant applications. Police are advised that when considering applying for search warrants under this legislation, the “focus is on the premises, not on the person”.<sup>189</sup> Accordingly, most of the examples in the manual focus on the role of the premises in facilitating drug supply operations. The manual encourages police to consider the following:

*Are premises used to secure drug activity? (showing modification of premises to defeat authorities may demonstrate **use**).*

*Are premises used to conceal drug activity, i.e. to provide privacy? (drug suppliers do not cut and cap heroin or cocaine on roads or vacant blocks. They **use** premises to protect their activity from exposure).*

*Are premises used as a shopfront? Purchasers are able to consistently attend the same place of purchase. Word of mouth can spread about a purchasing location (evidence of regular trading from premises should demonstrate this use).*

*Are premises used for storing drugs? There is a distinction between drugs stored in a safe or hiding place (premises **used**) and drugs being found in the pocket of a person who happens to be in the premises (premises **not used**).<sup>190</sup> [original emphasis]*

It is further stated that the Act was “not intended to be applied in circumstances in which premises are merely incidental to the supply of a prohibited drug.”<sup>191</sup> Investigators who are preparing search warrant applications are urged to include “information that links the premises to supply in some way beyond the fact that the offence occurred on the premises.”<sup>192</sup>

#### 4.2.1. Indicia of drug premises noted in search warrant applications

According to the Drug Premises Act, there are eight indicia that may be considered in determining if premises are drug premises. These indicia are discussed in some detail in the chapter, “Definition of Drug Premises”. It is important to note, however, that police are not limited to these indicia in determining that there are reasonable grounds to believe that premises are drug premises.

In their training manual on the Act, NSW Police note that most of the evidence of drug premises is likely to be found when police search the premises. This assertion is supported by our analysis of the limited number of search warrant applications that we were able to review. In most of the drug premises search warrant applications that we examined, there was minimal reliance on the indicia of drug premises in establishing the reasonable belief that the premises was being used for drug manufacture or supply. In these search warrant applications, there was a stronger reliance on intelligence reports from informants or community sources, or police observations of suspected drug dealing at the premises, and other information, such as the drug related offending history of the occupants.<sup>193</sup>

All of the drug premises search warrant applications that we received from Cabramatta noted at least one indicia of the of drug premises in the Act, but were mostly comprised of details of drug related intelligence on the occupants, or observations of dealing at the premises.<sup>194</sup> All of the applications referred to evidence of people coming and going from the premises.<sup>195</sup>

Three of the four drug premises search warrants that we received from a western Sydney LAC, LAC A, did not mention any of the indicators of drug premises in the Act.<sup>196</sup> One application noted one indicator of drug premises, the presence of firearms on the premises, and stated that the occupant was believed to be protecting his illicit drug activities with firearms. This application, and another one, mentioned people coming and going from the premises.<sup>197</sup>

The drug premises search warrant application that we received from the Western Region and the Northern Region did not note any of the indicators in the Act.

<sup>189</sup> NSW Police, Mandatory Continuing Police Education Scheme Package, *Police Powers (Drug Premises) Act 2001*, November 2001, p. 14.

<sup>190</sup> *Ibid*, pp. 15-16.

<sup>191</sup> *Ibid*, p. 15.

<sup>192</sup> *Ibid*, p. 15.

<sup>193</sup> Western Sydney LAC A, drug premises search warrant application 3, notes the occupant’s prior conviction for a cannabis offence, and application 2 notes that one of the occupants had been charged with a number of criminal offences. One of the search warrant applications from Cabramatta, (re: Maple Street) notes that one of the occupants is a convicted heroin supplier. The drug premises search warrant application that we received from a LAC in the Greater Western Region also noted that the occupant of the premises had ongoing supply matters before the court.

<sup>194</sup> Search warrant applications 1, 2 and 3, Cabramatta LAC.

<sup>195</sup> Search warrant applications 1, 2 and 3, Cabramatta LAC.

<sup>196</sup> Search warrant applications 1, 3 and 4, Western Sydney LAC A, Greater Metropolitan Region.

<sup>197</sup> Search warrant applications 2 (noted firearms) and 4, western Sydney LAC A, Greater Metropolitan Region.

The drug premises search warrant application that we received from inner city LAC, LAC B noted four of the indicia of drug premises. These were the presence of lookouts, of syringes and drug paraphernalia, and a reinforced steel door with a number of security locks and steel bars on the windows. This application also noted police observations of suspected drug dealing from the premises, intelligence reports and information from police informants and community sources about dealing at the premises. Police observations of people coming and going from the premises, who stay for a short period of time, were also noted.<sup>198</sup>

## 4.2.2. Case Studies: Grounds for drug premises search warrant applications

In the following section, three drug premises search warrant applications from western Sydney LAC A will be discussed.

### 4.2.2.1. Background

Police first applied for a drug premises search warrant in this western Sydney LAC several weeks after the legislation commenced. A few months later, police initiated an operation that specifically involved the use of the Drug Premises Act to deal with drug supply in the area. We received copies of four drug premises search warrant applications, and one Part 2 search warrant application under the Search Warrants Act.

In this section, we will discuss the first drug premises search warrant application made in this LAC, and two of those made as part of the Operation staged later in 2001. Another of the drug premises search warrant applications made as part of this Operation is discussed later in this chapter.<sup>199</sup> In this instance, no one was home when the search warrant was executed, and the occupants of the premises were in the process of moving out.

## Case study 1.

### Drug premises search warrant application, western Sydney LAC A

The application details the following:

Police had conducted a search of a back yard shed in a suburb near the location of the suspected drug premises the month before they applied for the drug premises search warrant, and located 29000 white tablets. These tablets were part of a batch of 1000000 tablets that had gone missing from a Sydney pharmaceutical company the previous year. The tablets were pseudoephedrine-based tablets commonly used as a precursor for the illicit manufacture of amphetamines.

Police enquiries revealed that the tablets had been placed in the shed by occupant A of the premises subject to the drug premises search warrant. Police also had strong evidence to suggest that occupant A had the tablets for the purpose of drug manufacture. Police had attempted to question him, but he had been actively avoiding police attempts to locate and question him.

Police then discovered occupant A's new address, and that he and his flat mate occupant B were manufacturing drugs at the new premises. The applicant also provided details of more recent information police had received:

*Police have received reliable information that there was, and may still be, a large quantity of white capsules contained in a white plastic shopping bag in the kitchen of that address. Some of these tablets are believed to contain pseudoephedrine. In addition, the police have been informed that [occupant A] and [occupant B] have previously manufactured amphetamines at this address using a large pot.*

Police had also received information that linked occupant A to "other persons who are the subject of police intelligence holdings" relating to the manufacture, distribution and sale of amphetamines.

<sup>198</sup> Inner-Metropolitan Region LAC, search warrant application.

<sup>199</sup> Search warrant application 4, western Sydney command A, Greater Metropolitan Region. This application is discussed in the section on instance in which drug premises search warrants were executed, but no charges under this Act were laid.

## Case study 2.

### Drug premises search warrant application, western Sydney LAC B

An operation in response to the proliferation of drug related criminal activity involving drug manufacturing in western Sydney was initiated by western Sydney LAC B.

Phase 1 of this operation involved the execution of drug premises search warrants on a number of premises. In the early stages of the operation, police had utilised existing intelligence holdings to identify a number of premises within the suburb that were and still are actively engaged in the sale, distribution and/or manufacture of prohibited drugs, principally amphetamines but also including heroin, cocaine, ecstasy and cannabis.

Police then applied for drug premises search warrants in respect of a series of premises. We received three drug premises search warrant applications from this operation. Operational Orders described the broader objectives of the operation as including the discovery of evidence that each of the target premises are drug premises and the detection and prosecution of any person suspected of having committed any offence under the Act. These operational orders illustrated the two-stage process in gathering evidence that premises are drug premises that was referred to in the drug premises training manual discussed previously in this chapter.

One of the applications police from this operation contained the following information:

Police had received information from a source two weeks prior to the date on the search warrant application, that occupant A of the premises was to receive a large quantity of amphetamine and firearms that were intended both for further sale and for the purpose of protecting his drugs and drug proceeds against other criminals. A week later, police received information from an anonymous source that a number of motor vehicles had been seen arriving at his house, and leaving a short time later.

Police then set out intelligence information dating back to the middle of that year, about both the premises and occupant A. Just over a month before the warrant application, police received information from a well connected source that a person, by the same name as their suspect, had been dealing amphetamines from the same house. Similar information had also been received two months earlier. Information about the premises had also come from community sources. In addition, a Crime Stoppers call passed on information that despite recent police raids on the property, business, presumably the sale of prohibited drugs was still continuing from the same.

Overall, police stated that they had received a total of 63 drug related intelligence reports about the premises over the past year and a half. The applicant also noted that previous warrants executed on the premises had indicated to police that the suspect and his girlfriend had assets which were inconsistent with their unemployed status.

## Case study 3.

### Further drug premises search warrant application, western Sydney LAC B

Another drug premises search warrant application we received in relation to this Operation in western Sydney, relating to premises A, contained the following information:

The search warrant applicant first notes that police had recent information that amphetamines and cocaine were sold in quantities of up to a quarter of an ounce from premises A. Police also had:

*... reliable information from a verified source who has recently witnessed the occupant of the address, [name of occupant] supplying amphetamines from this location.*

The applicant notes that above information is also supported by a separate verified source.

Further, it is noted that about four months earlier, the occupant's car was seen parked outside the address (premises B) of a reputed supplier of amphetamines. A search warrant had been executed on premises B two months later, and 50 grams of amphetamines, drug related implements and an unlicensed semi-automatic handgun had been found.

Two reports about the occupant of premises A that were received from anonymous sources are also mentioned. These dated back approximately one year before the drug premises search warrant was applied for. One report had indicated that occupant A was selling amphetamines to children as young as twelve.

Finally, the search warrant application notes that police had reports that linked the occupant of premises A to the sale of prohibited drugs as far back as 1999, and that the occupant had also been convicted of supplying cannabis in 1998.

### 4.2.3. Specifying what police intend to seize

In addition to setting out the grounds upon which the officer seeks the search warrant, police must also describe in the application what, if any, items they intend to seize, and the location of these items, if it is known.<sup>200</sup> Again, in their training material about search warrants, police are advised to provide in applications detailed descriptions of what they intend to seize. In the NSW Police Standard Operating Procedures for search warrants, and in the NSW Police Law Notes, police are advised that the description of the thing that police are seeking authority to search for should be “accurately described”<sup>201</sup> and as “specific as possible”.<sup>202</sup> Police are also warned that a search warrant may be held to be invalid by higher courts if the thing being searched for is not “sufficiently described”.<sup>203</sup>

Police are also advised in training material on preparing search warrant applications that the applicant:

*...will need to include facts **upon which an authorised justice could be satisfied** that there are reasonable grounds for believing that the thing that's to be the object of the search would afford evidence of the commission of a **particular stated offence**.*<sup>204</sup>

One of the factors a magistrate needs to consider in determining whether there are reasonable grounds to issue a search warrant according to the Search Warrants Act, if the warrant is required to search for a thing, is whether there is a “sufficient connection between the thing sought and the offence”.<sup>205</sup>

In the first case study outlined above, the search warrant applicant describes the things police intend to seize in the following way:

*1. I seek to be able to perform the following specific functions on entry:*

*Search for and seize prohibited drugs (other than cannabis and cannabis resin), cash and property associated with the manufacture, distribution and sale of prohibited drugs such as chemicals, scales, foils, balloons and other forms of drug packaging, prohibited weapons and articles, recipes, sets of instructions or other relevant information pertaining to the manufacture of prohibited drugs (other than cannabis or cannabis resin), bank books, bank deposit and withdrawal records, cheque books, bank statements, credit cards, debit cards and any other records revealing evidence of the receipt and disposition of funds potentially received from the manufacture, distribution and sale of prohibited drugs (other than cannabis or cannabis resin) as well as mobile phones, mobile phone records, computers and associated equipment, internet records, microwave ovens and other appliances, pots and other containers.*<sup>206</sup>

This description is particularly detailed, compared with other search warrant applications we received from this and other LACs. For example, the description of the things that police sought to search and seize in the second case study from this LAC is as follows:

*3. I seek to be able to perform the following specific functions on entry:*

*Search for and seize prohibited drugs (other than cannabis and cannabis resin), cash or property associated with the sale and distribution of prohibited drugs such as scales, foils, balloons, plastic resealable bags, prohibited weapons and articles and records associated with the sale or distribution of prohibited drugs.*<sup>207</sup>

After describing what police intend to search for and seize in the premises, search warrant applications then state other functions that relate to gaining entry to the premises. As noted previously, drug premises search warrants also give police some additional powers that are not available to them in search warrants issued under the Search Warrants Act. These additional powers entitle police to “pass through, from, over, or along any other land or building for the purpose of entering the premises”.<sup>208</sup>

<sup>200</sup> Search Warrants Act, s. 12A(d). According to this provision, if the search warrant application is seeking authority to seize a particular thing, the applicant must provide a full description of the thing.

<sup>201</sup> NSW Police, “Standard Operating Procedures, Search Warrants”, undated.

<sup>202</sup> NSW Police, Law Notes 4 of 2003, Making Better Search Warrant Applications- Part 1.

<sup>203</sup> Ibid.

<sup>204</sup> NSW Police, Law Notes 5 of 2003, Making Better Search Warrant Applications- Part 2.

<sup>205</sup> Search Warrants Act, s12A(2)(b).

<sup>206</sup> Drug premises search warrant application 1, western Sydney LAC A, Drug Premises Incident 33.

<sup>207</sup> Search warrant application 2, western Sydney LAC A, Greater Metropolitan Region, Drug Premises Incident 33.

<sup>208</sup> The other powers that are available to police in relation to the execution of search warrants are in Section 17 of the Search Warrants Act and these are:

“For the purpose of executing a search warrant issued under this Part in respect of premises, a police officer may: (1) A person authorized to enter premises pursuant to a search warrant may use such force as is reasonably necessary for the purpose of entering the premises (2) A person authorized to search premises pursuant to a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or on the premises for the purposes of that search.”

#### 4.2.4. Presenting the application before an authorised justice

Once the search warrant application has been prepared, it is then put before an authorised justice, usually a local magistrate.<sup>209</sup>

In order for a drug premises search warrant to be issued, the authorised justice must also be satisfied that there are reasonable grounds for issuing it. Section 5 (2) of the Drug Premises Act states:

*An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any police officer to enter and search the premises.*<sup>210</sup>

Applications are usually presented in person, though there is provision in the Search Warrants Act for the issuing of search warrants over the telephone.<sup>211</sup> The information in the search warrant must also be later verified on oath before the magistrate, or by affirmation or affidavit.<sup>212</sup>

In training material on search warrant applications, police are advised to have all relevant documentation when they put their application before an authorised justice to ensure police can immediately “produce information to substantiate any aspect of the application”.<sup>213</sup> Officers are also told to “expect the authorised justice to assess and test the material you present very carefully before accepting it”.<sup>214</sup> The Standard Operating Procedures on Search Warrants issue the following advice to police:

*Do not assume that the Justice assessing information contained within the application for a warrant will “rubber stamp” it. The Justice will objectively assess the application and rigorously test its probity before finally accepting and issuing a warrant.*<sup>215</sup>

Guidance on what to consider in determining if reasonable grounds exist to grant the search warrant is provided in the Search Warrants Act. The Act states the following:

- 1) *An authorised justice when determining whether there are reasonable grounds to issue a search warrant is to consider (but is not limited to considering) the following matters:*
  - a. *the reliability of the information on which the application is based, including the nature of the source of the information,*
  - b. *if the warrant is required to search for a thing in relation to an alleged offence- whether there is sufficient connection between the thing sought and the offence.*<sup>216</sup>

#### 4.2.5. Does the Drug Premises Act lower the threshold for obtaining search warrants?

Concern was expressed in parliamentary debate and in submissions to our discussion paper that the Drug Premises Act lowered the threshold for obtaining search warrants in NSW. North and North West Community Legal Service expressed this concern, and believed that as a consequence, the Act would lead to the “targeting and over policing of already marginalised and vulnerable groups”.<sup>217</sup> The Legal Service recommended that the requirement for obtaining search warrants under the Drug Premises Act be the same as the requirement in the Search Warrants Act, that police must have a reasonable belief that there is a particular thing connected with a particular narcotics offence on the premises.<sup>218</sup>

While police have not reported any difficulties in obtaining drug premises search warrants under the Act, they have not indicated that drug premises search warrants are any easier to obtain than Part 2 search warrants. Police who we have spoken to for this review have commented that different types of evidence are required in order to obtain a drug premises search warrant, as opposed to a Part 2 search warrant. A former Crime Manager from Cabramatta noted that:

<sup>209</sup> An authorised justice is defined as a magistrate, a justice of the peace who is also a Clerk of a local court, or a justice of the peace who is employed by the Department of Courts Administration and who has been declared by the Minister who administers the Act to be an authorised justice for the purposes of the Act. *Search Warrants Act* Part 1(3).

<sup>210</sup> *Police Powers (Drug Premises) Act 2001*, s. 5(1)

<sup>211</sup> These provisions are contained in Section 12 of the *Search Warrants Act*. This section stipulates that an authorised justice is not able to issue a telephone warrant unless they are “satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person” (s.12(3)).

<sup>212</sup> *Search Warrants Act*, s. 11(2).

<sup>213</sup> NSW Police, Law Notes 4 of 2003 Making Better Search Warrant Applications- Part 1.

<sup>214</sup> NSW Police, Law Notes 6 of 2003 Making Better Search Warrant Applications- Part 3.

<sup>215</sup> NSW Police, Standard Operating Procedures, Search Warrants, p. 8, undated.

<sup>216</sup> *Search Warrants Act*, s 12A(2)(a) and (b)

<sup>217</sup> Submission, North and North West Legal Service, 1 August 2003. The Legal Service recommended that in order to obtain a search warrant, police should be required to have reasonable grounds for believing there are “things connected with a particular narcotics offence” on the premises. This is the same requirement for obtaining search warrants for drug related offences that is contained in s. 5(1)(c) of the *Search Warrants Act*. Similar concerns were also expressed in a submission we received from the East Area Tenants Service, dated 31 July 2003.

<sup>218</sup> Submission, North and North West Community Legal Service, 1 August 2003.

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*... drug premises warrant, you've really [got to] list what your indicators are, whereas the [Part 2] search warrant, you've got to indicate to the magistrate why you believe there is drugs on that premises, to support your charge.*<sup>219</sup>

A detective from Cabramatta LAC believed that more information is required to obtain a drug premises search warrant. This officer said that "you need more information obviously to show drug house, than you would for a Part 2".<sup>220</sup> The officer also said that obtaining evidence to apply for a drug premises search warrant was a more protracted process, and that there is "more surveillance, over a number of days, identifying things along the way, you're building up a dossier".<sup>221</sup>

Some officers were of the view that less specific information about suspected drug supply activities is required for a drug premises search warrant, compared with a Part 2 search warrant. A Part 2 search warrant stipulates that police must have a reasonable belief that a thing connected with a particular narcotics offence is, or will be, on the premises within 72 hours.<sup>222</sup> A former Crime Manager from Cabramatta said that in applying for a drug premises search warrant, police are not informing the magistrate that they have a reasonable belief that drugs will be on the premises when they execute the search warrant, but that:

*I am hopefully going to get evidence on there to support a charge of being on drug premises, to support a charge of supply, but I can't prove to you that there drugs there right now or that I'm going to find drugs, but these indicators tell me that its actually more than that, that it's a drug premises.*<sup>223</sup>

A defining characteristic of the Drug Premises Act is that it enables police to apply for a search warrant and to lay charges, on the basis of circumstantial evidence of illicit drug activity. As we have noted previously, this characteristic of the Act was for the specific purpose of enabling police to lay charges when direct evidence of illicit drug activity - such as prohibited drugs - was not found.

#### 4.2.6. Applying for a Part 2 search warrant, instead of a drug premises search warrant

Over the review period, there were instances in which police applied for a search warrant under the Search Warrants Act, and then laid drug premises charges against the occupants once they were on the premises.

We received the following types of search warrants from the commands audited for this review:

- Cabramatta LAC, ten drug premises search warrants and two Part 2 search warrants
- Western Sydney LAC A, six drug premises search warrants and three Part 2 search warrants
- Inner Metropolitan Command A, seven drug premises search warrants
- Inner Metropolitan Command B, one drug premises search warrant
- State Crime Command, three drug premises search warrants and six Part 2 search warrants
- Northern Region Commands, two Part 2 search warrants, and one drug premises search warrant and
- Western Region Command, one drug premises search warrant.

Some commands, particularly the State Crime Command, chose to apply for a Part 2 search warrant, rather than a drug premises search warrant. In other LACs, particularly Cabramatta, a high proportion of the search warrants applied for were drug premises search warrants.

Officers we spoke to in two of the LACs we audited said that if they had information on a particular person who was supplying drugs, they would apply for a Part 2, rather than a drug premises search warrant.<sup>224</sup> For example, we asked an officer from the western Sydney LAC why their use of drug premises search warrants in that command had declined in the second year of our review. He said that in the last few drug operations police had conducted in the area, police had "specific information where you don't need the drug premises legislation to respond to it" such as information that the offender was currently "holding a heap of drugs".<sup>225</sup> In his view, the Drug Premises Act was "a bit more general in its application" and with a "Part 2 warrant you have to know that something is in there... a drug premises you are looking for secondary evidence, like drug scales".<sup>226</sup>

<sup>219</sup> Interview, former crime manager, Cabramatta Police, 31 August 2003.

<sup>217</sup> Submission, North and North West Legal Service, 1 August 2003. The Legal Service recommended that the in order to obtain a search warrant, police should be required to have reasonable grounds for believing there are "things connected with a particular narcotics offence" on the premises. This is the same requirement for obtaining search warrants for drug related offences that is contained in s. 5(1)(c) of the *Search Warrants Act*. Similar concerns were also expressed in a submission we received from the East Area Tenants Service, dated 31 July 2003.

<sup>218</sup> Submission, North and North West Community Legal Service, 1 August 2003.

<sup>219</sup> Interview, former crime manager, Cabramatta Police, 31 August 2003.

<sup>220</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>221</sup> Ibid.

<sup>222</sup> *Search Warrant Act*, s.5(1).

<sup>223</sup> Interview, former crime manager, Cabramatta Police, 31 August 2003.

<sup>224</sup> A crime manager in inner-city LAC B who we interviewed on April 16 2003, and a Detective Sergeant who applied for drug premises search warrants in western Sydney LAC A expressed this view. Personal communication, Detective Sergeant, western Sydney LAC A, 25 November 2002.

<sup>225</sup> Personal communication, Detective Sergeant western Sydney LAC A, 25 November 2002.

<sup>226</sup> Ibid.



A Crime Manager we interviewed from an inner city LAC had also chosen to use Part 2 search warrants for similar reasons. He said that “when you apply for a warrant under drug house legislation you don’t know who is selling” the prohibited drugs.<sup>227</sup> One example he gave of a situation in which drug premises search warrants had been useful was when “you wouldn’t be able to get undercover police on the premises” to conduct controlled drug buys because the drug house operators require that drug buyers use the drugs on the premises.<sup>228</sup>

On another occasion, in which drug premises charges were laid against several occupants in a motel room in a LAC in the Northern Region, police told us that they considered applying for a drug premises search warrant, but decided to apply for a Part 2 search warrant because there was not enough evidence prior to the execution of the search warrant that the motel room was drug premises.<sup>229</sup> This incident is documented in the Chapter on “Types of drug premises”.

Another reason why police might choose to apply for a Part 2 search warrant instead of a drug premises search warrant is the requirement, under section 5 (1) of the Act, that a sergeant make the application. An officer of any rank may apply for a Part 2 search warrant.<sup>230</sup> This is discussed in further detail at the end of this chapter.

#### 4.2.7. Concerns about the incorrect identification of drug premises

Concern was expressed during parliamentary debate on the Act that premises may be wrongly identified as drug premises. In a submission to our discussion paper, concern was also expressed that premises may be searched by police, and as a result, the occupants may be evicted even though no offence had been committed. The East Area Tenants Service were concerned that:

*A search of rented premises under this Act may result in the termination of a tenancy ... even in the event that no criminal conviction arises from the activity, the suspicion indicated by the search may result in an action to terminate the tenancy on the basis of illegal use of the premises.*<sup>231</sup>

We are aware of one instance in which this appears to have occurred. A drug premises search warrant was executed on a house in the northern suburbs of Sydney. Six people who were found on the premises were charged with drug premises offences.<sup>232</sup> A police officer who had been involved in the investigation contacted their real estate agent several days after the search warrant had been executed, and they were subsequently evicted. At court, the drug premises charges were dismissed against all six defendants. The magistrate commented that the “conversation which police officer [surname] had with the real estate agent leading to an eviction was not a proper exercise of the police position”.<sup>233</sup>

#### 4.2.8. How many times was a drug premises search warrant executed, but no charges were laid under the Drug Premises Act?

We do not know the exact number of times a drug premises search warrant was issued and executed, but no charges were laid (however, we are aware of several instances in which this occurred). The reasons for the absence of this information is discussed in our chapter on “Methodology”.

This is a significant flaw in the information that was available to us for this review. As a result, for example, we have not been able to determine if, and to what extent, drug premises search warrants were granted, but the premise was not found to be drug premises when the search warrant was executed. Nor do we know the extent to which other factors, such as the fact that cannabis was the only prohibited drug found on the premises, was the reason why charges under the Drug Premises Act were not laid.

We were informed by two LACs we audited of three separate instances in which a drug premises search warrant was granted, and no charges under the Drug Premises Act were laid. In two of the three incidents, cannabis was the only prohibited drug located, so no charges under the Drug Premises Act were laid.<sup>234</sup> In a third incident, a drug premises search warrant was executed but no one was home when police arrived.<sup>235</sup> Police told us that the occupants of this house were in the process of moving out and that the house was almost empty when they arrived.<sup>236</sup>

<sup>227</sup> Interview, crime manager, inner-city LAC, April 16 2003.

<sup>228</sup> Ibid.

<sup>229</sup> Interview, Detective Sergeant Northern Region Command, 14 November 2003.

<sup>230</sup> *Search Warrants Act 1985*, s. 5.

<sup>231</sup> Submission, East Area Tenants Service, 31 July 2003.

<sup>232</sup> Five people were charged with allowing the premises to be used as drug premises, and one person was charged with being found on, entering or leaving drug premises.

<sup>233</sup> *Police v Michael Richard Thomas Anthony, Ian William Rodger, Phillip Wilfred Francis, David John Connors, Michael James Malone and John James Dempster*, 11 February, p. 30.

<sup>234</sup> Greater Metropolitan Region Drug Premises Incident 38, and Northern Region Drug Premises Incident 9.

<sup>235</sup> Other drug premises search warrants that were applied for as part of this operation are discussed in the case studies of search warrant applications provided later in this chapter.

<sup>236</sup> Personal communication, detective sergeant, western Sydney LAC, 9 August 2002.

#### 4.2.9. Sergeants required to apply for drug premises search warrants

The Drug Premises Act stipulates that applications for search warrants must be made by a police officer of or above the rank of sergeant,<sup>237</sup> whereas any member of the police force can apply for a Part 2 search warrant.<sup>238</sup> Police officers of varying ranks from LACs across the state have told us that they find this aspect of the legislation problematic.

Most of their concerns related to situations where the sergeant who was applying for the search warrant had not been involved in the investigation that led up to the decision to apply for the search warrant. Police were concerned that this may impact upon the integrity of the process<sup>239</sup> of obtaining search warrants, and the ability of officers to maintain ownership and responsibility for an investigation.<sup>240</sup> Officers said that they believed that it was more ethical and professional for the officer who was involved in the investigation to apply for the search warrant.<sup>241</sup>

As we have outlined previously in this chapter, search warrant applications are usually made after investigative work has been conducted on the premises and/ or its occupants. This may include surveillance operations, conducting controlled drug buys and gathering and analysing intelligence reports. Police expressed concerns that if a sergeant who was not involved in the investigation were required to apply for the search warrant, the information he or she presented would be second hand. One officer said:

*It is better for the person that's had carriage of the information.. [to apply for the search warrant]... I'm a sergeant of police, I might have had very little to do with that investigation... because [police officer x] has been doing all the initial inquiries on the premises, he's gone and done the video, he's spoken to the drug addicts, he's done all the observations, but because I'm a sergeant of police, I have to go and make an application on behalf of [police officer x].<sup>242</sup>*

This officer also pointed out that a constable of police can apply for a search warrant in relation to any manner of criminal offence, armed robbery, or whatever it may be, but it has to be a "sergeant of police to get a drug house one".<sup>243</sup>

One Crime Manager we interviewed said that continuity between the investigation and the application for the search warrant was particularly important when the applicant put the information before a magistrate. An applicant involved in the investigation helped to ensure that the magistrate was in the best position to establish whether there were reasonable grounds to issue the search warrant. This officer said:

*I take on the investigation to gather the evidence, say for example a magistrate asks me a question that's not contained in the [application], to query something, if it's my information, I'm in a position as to better provide him that information, to clarify an issue, to guide him as to what his decision might be. Whereas a sergeant who isn't involved in the investigation – he's not in a position to value add to that decision of the magistrate.<sup>244</sup>*

NSW Police training material on search warrants also advises police that:

*It is highly desirable, therefore, that the officer who attends before the justice with the application is an officer with first hand-knowledge of the case.<sup>245</sup>*

Another police officer we spoke to argued that the rank of the police officer applying for the search warrant was insignificant because the magistrate ultimately decides if the search warrant should be granted. He said:

*At the end of the day, if the sergeant says it's a drug house, it's still up to the court to say it's a drug house... it really means nothing until the court, the magistrate says it's a drug house, and says, "I agree with your assertion, this is a drug house".<sup>246</sup>*

In a submission to our discussion paper, another Crime Manager recommended that consideration be given to changing the requirement that only an officer ranked as a sergeant or above could apply for a drug premises search warrant. The submission argued that a senior investigating officer, as defined in the Crimes (Forensic Procedures) Act 2000 should be able to make drug premises search warrant

<sup>237</sup> *Police Powers (Drug Premises) Act*, s. 5(1).

<sup>238</sup> *Search Warrants Act*, Part 2, s. 5(1).

<sup>239</sup> Interview, former crime manager, Cabramatta LAC, August 2003.

<sup>240</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>241</sup> *Ibid.*

<sup>242</sup> *Ibid.*

<sup>243</sup> *Ibid.*

<sup>244</sup> Interview, former crime manager, Cabramatta LAC, 21 August 2003.

<sup>245</sup> NSW Police, Law Notes 6 of 2003, Making Better Search Warrant Applications, Part 3.

<sup>246</sup> Focus group, Cabramatta police, 2 July 2003.

applications. In this Act, an investigating police officer was defined as “any police officer in charge of an investigation of the commission of an offence”.<sup>247</sup> The wording of this provision has since changed, and has been replaced with “any police officer involved in an investigation”.<sup>248</sup> The following is an extract from this officer’s submission:

*The only reasonable intent of Section 5 (1) [which stipulates that the application must be made by an officer of, or above the rank of sergeant], I imagine, is to in some way ensure the integrity and accuracy of the application information. Drug Premises search warrant applications, by their very nature, will rely upon intelligence and/or evidence gathered during an investigation already underway. In such cases the “senior investigating officer” (as defined in the Crimes (Forensic Procedures Act) 2000) would be best placed [to] ensure the integrity/accuracy of information sworn before the justice. Further, I expect an authorised justice would much prefer to have before him an applicant who has knowledge of all the investigation information, someone who could also give informed answers to any questions(s) the justice has. Under current legislation, if there is not a sergeant involved in the investigation the justice would have before him an applicant whose knowledge is limited to what he had been told by an investigating officer.*<sup>249</sup>

Another reason why some police had difficulties with this aspect of the legislation relates to the fact that there are fewer sergeants than constables in NSW Police. A sergeant is not always available to make a search warrant application. As at June 2003, there were 2,248 sergeants and 9,660 constables in NSW Police.<sup>250</sup>

In addition, the wording of the form that police must use to apply for drug premises search warrants, unlike warrants issued under Part 2 of the Search Warrants Act, means that the person who has made the application must also be present when the search warrant is executed.

Police who had used the legislation in the Cabramatta LAC said that on some occasions they had applied for a Part 2 search warrant on a suspected drug premises because there were no sergeants available at the time. To illustrate their point, they said that at that particular time, while they had four detective sergeants stationed at the LAC, two of them were away working on strike forces, and those who were available also had other commitments such as court appearances and training courses, that impacted upon their availability.<sup>251</sup>

This view was also articulated by another officer from a LAC in western Sydney. This officer believed the Drug Premises Act would have been used more often in his LAC if constables had been able to apply for search warrants because, as he put it, there are “more constables around than sergeants”.<sup>252</sup> He said that there were a “large number [of drug premises] that you would want to target, and you would do a lot more warrants”<sup>253</sup> if it was not necessary to have a sergeant apply for the search warrant.

#### 4.2.10. Conclusion

There is no compelling evidence that the Drug Premises Act lowers the threshold for obtaining search warrants. Almost all of the drug premises search warrants that we were able to examine contained fairly detailed information about suspected drug related activity at the premises. There are also a number of safeguards incorporated into the process of applying for search warrants, such as the requirement that a search warrant application must be put before an authorised justice for approval.

We understand the requirement in the Drug Premises Act that a sergeant apply for a drug premises search warrant was considered to be an additional safeguard in the legislation. However, our research findings suggest that the integrity of the information contained in search warrant applications is more likely to be ensured by a police officer who is in charge of the investigation of the suspected drug premises. Such a police officer, as opposed to a sergeant who may not have been involved in the investigation, will be better placed to respond to any queries that the magistrate may have in deciding whether to grant the search warrant. It was also apparent that there are a range of practical difficulties arising from the requirement that a sergeant apply for a drug premises search warrant.

In recommending Parliament consider a change to this requirement, we recognise NSW Police should ensure appropriate supervision of less senior officers in making applications.

<sup>247</sup> *Crimes (Forensic Procedures) Act 2000*, Part 1, s. 3(1).

<sup>248</sup> *Crimes (Forensic Procedures) Amendment Act, 2002*, s. 3(1).

<sup>249</sup> Submission, Cabramatta crime manager, 15 August 2003, pp 1-2.

<sup>250</sup> Australian Institute of Criminology, “The Composition of Australia’s Police Services as at June 2003”. These figures include constables, senior constables, sergeants and senior sergeants.

<sup>251</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>252</sup> Personal communication, Crime Coordinator, Western Sydney LAC, August 2003.

<sup>253</sup> *Ibid.*

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### 4.3. Recommendation

**That Parliament consider replacing the requirement in the Drug Premises Act that sergeants apply for drug premises search warrants and instead require that a police officer in charge of an investigation into a suspected drug premises apply for a search warrant.**

We note that NSW Police advised us in its response to a draft version of this report that it supports this recommendation. NSW Police has also noted that, with the introduction of any legislative amendment giving effect to our recommendation, a new topic would be added to the second year of the Diploma of Policing Practice curriculum which would cover the relevant legislation and its impact on the responsibilities of constables of police.

# Chapter 5. The definition of drug premises in the Act and types of drug premises

According to the Drug Premises Act, drug premises are “any premises [that] are being used for the unlawful supply or manufacture of any prohibited drug”, other than cannabis resin, leaf or oil.<sup>254</sup> The definition of premises provided in the legislation includes any structure, building or aircraft, vessel or place, or any part of any such structure or place.<sup>255</sup> Therefore it is possible for a flat, a house, a car, or a parking lot to be considered drug premises.<sup>256</sup>

Another important feature of the legislation is that premises may still be considered to be drug premises whether or not drugs are found on the premises.<sup>257</sup> This feature of the legislation was reportedly included to enable police to lay charges under the Act in situations such as those in which drugs had been destroyed prior to police entry, but other evidence indicated to police that the premises had been used for drug manufacture or supply.

In this chapter, we will examine each of the eight indicia in the Act<sup>258</sup> that may be used to define drug premises, the characteristics of identified drug premises that were recorded by police, and several court cases in which the indicia used to define particular drug premises were at issue. We will also discuss the concerns raised about the use of particular indicia in the Act, such as fortifications, syringes and the presence of drug affected people, to define drug premises.

It was evident from our review of the operation of the Act that various types of drug premises exist, including non-domestic drug premises, cars, clandestine laboratories, and a motel room. Each of these types of drug premises will be discussed in this chapter.

## 5.1. Indicia that define drug premises in the Act

In order to find a person guilty of the drug premises offences of: being found on entering or leaving drug premises; organising, conducting or assisting drug premises, or allowing premises to be used as drug premises; the prosecution must satisfy the court that the premises were being used for the unlawful supply or manufacture of any prohibited drug, other than cannabis leaf, oil or resin, at the time when the offence was committed.<sup>259</sup>

Section 11 of the Act provides eight indicia to which regard may be had in determining if premises are being used for the unlawful supply or manufacture of drugs – that is, whether premises constitute drug premises. However, a court is not limited to these indicia alone in considering if premises were being used for drug manufacture or supply.<sup>260</sup> The Act does not provide guidance on the weight each criterion is to be accorded. The indicia are:

- (a) evidence that a police officer authorised by law to enter the premises was wilfully prevented from, or obstructed or delayed in, entering or re-entering those premises or any part of those premises,
- (b) evidence of the external or internal construction of the premises, including any external or internal door of, or means of access to, those premises that is found likely to have been fitted with a bolt, bar, chain, or any means or device for the purpose of preventing, delaying or obstructing the entry or re-entry into those premises of such a police officer or any other person, or for giving an alarm in case of such entry or re-entry,
- (c) evidence of a person acting as a lookout to warn persons on the premises of the approach of police officers or other persons,
- (d) evidence that there was found on the premises, or in the possession of a person on those premises, any syringe or other means or device used in the supply, manufacture or use of a prohibited drug,

<sup>254</sup> *Police Powers (Drug Premises) Act*, s. 3(1). Cannabis resin, leaf and oil are excluded from the definition of “prohibited drug” in the Drug Premises Act, according to section 3 of the Act.

<sup>255</sup> *Police Powers (Drug Premises) Act*, s. 3(1).

<sup>256</sup> It is most likely that the Act was intended for use on enclosed premises. However, because the definition of premises in section 3 of the Act also includes a “place (whether built upon or not)”, the Act could also apply to a place such as a parking lot.

<sup>257</sup> *Police Powers (Drug Premises) Act*, s. 10.

<sup>258</sup> *Police Powers (Drug Premises) Act*, s. 11.

<sup>259</sup> *Police Powers (Drug Premises) Act*, s. 11(1).

<sup>260</sup> *Police Powers (Drug Premises) Act*, s. 11(2).

- (e) evidence that there was found on the premises, or in the possession of a person on the premises, a firearm or prohibited weapon the possession of which is unlawful,
- (f) evidence that there was found on those premises any documents or other records, including computer records, that appear to have been kept or used in connection with the unlawful supply or manufacture of a prohibited drug,
- (g) evidence that there was found on the premises any large amount of money that is not accounted for by the owner or occupier of the premises,
- (h) evidence that there were found on those premises persons who appeared to be affected by a prohibited drug.

It is important to note that while certain features, such as fortifications, are commonly noted in police descriptions of drug premises, the Act does not stipulate that drug premises must show evidence of fortifications or of any other particular characteristic.

Regard may also be had to other evidence in determining if premises are being used for drug manufacture or supply, such as a series of undercover drug buys conducted by police or evidence of people coming and going from the premises.

NSW Police has advised us that the following indicia were most commonly used to define drug premises:

- fortification of premises such as the presence of steel doors and barred windows
- regular attendance at the premises by known drug users
- the number of drug affected people in the vicinity
- occupancy by a high risk offender
- number of nearby arrests for possession of drugs
- presence of syringes in the vicinity and
- ability to use evidence provided by members of the public.<sup>261</sup>

Some of the above characteristics are indicia in the Act, and others, such as regular attendance at the premises by known drug users, information from the public and occupancy of the premises by a "high risk offender", are not.

A submission to our discussion paper from a LAC in Northern Region listed the indicia most commonly used by police in that area to determine whether to apply for a search warrant under the Act. Evidence such as constant human traffic to and from premises, and the presence of fortifications also figured strongly for these police:

*The indicia used to determine whether or not a search warrant will be applied for under the conditions of the act are: community information about drug dealing from the location; Police observations of traffic to and from the location; Police observations of known drug dealers and users frequenting the location; blacked out windows, security devices and other indications that a premises is fortified to a degree beyond that typical of legitimate premises of this nature in that area; and drug paraphernalia (used syringes etc) left around and near the premises.<sup>262</sup>*

There is no compelling evidence emerging from this review that any of the indicia that may be used to define drug premises is inappropriate, or that any particular indicia should be removed from the Act.

Specific concerns were raised in submissions to our discussion paper and elsewhere about indicia such as fortifications, syringes and the presence of drug affected people. However, we did not find evidence that the use of any of these indicia had operated unfairly. It is clear that user/dealers were charged and convicted under this Act, so items such as syringes that were found on drug premises may equally have been an indicator of their drug use, as of drug supply. However, we did not find any evidence that syringes alone, or in combination with another factor like the presence of drug affected people, had been successfully used to prove that premises were drug premises. It is unlikely that a prosecution that relied on these facts alone would be successful.

Our research findings strongly suggest that evidence of people coming and going from premises, and staying for a short period of time, is a common characteristic of drug premises. In particular, it is a common indicator in applications for drug premises search warrants. Therefore, we recommend that Parliament consider the inclusion of this as indicia of drug premises in section 11 of the Act.

It is noted that this indicia is included in legislation relating to drug premises in the Northern Territory. This Act stipulates that excessive, frequent or suspicious vehicular or pedestrian traffic to or from the premises may be an indicator of drug premises.<sup>263</sup>

<sup>261</sup> Submission, NSW Police, received 12 August 2003.

<sup>262</sup> Submission, Northern Region LAC, received 30 July 2003.

<sup>263</sup> *Misuse of Drugs Act* (NT) s.11C(1).

## 5.2. Recommendation

**That Parliament consider the inclusion of “evidence of people coming and going” as an indicator that may be used to define drug premises in the Act.**

NSW Police has advised that it supports this recommendation, saying that the inclusion of this indicator “could provide significant support during an investigation”.

## 5.3. Drug premises beyond reasonable doubt

Regardless of which, or how many, indicia are used to define drug premises, it must be proved beyond reasonable doubt that the premises were being used for the supply or manufacture of prohibited drugs when an offence under the Act is committed.<sup>264</sup> In a focus group, one police officer explained the connection between the indicia of drug premises in the Act, and the requirement to prove that premises are drug premises:

*There's indicators, but you still have to argue an opinion of what the premises is being used for, or those things being on the premises, you've got a nexus between what's there, and what it's being used for.<sup>265</sup>*

## 5.4. Audit of characteristics of drug premises

We recorded the characteristics of drug premises that were noted by police in the documents that we examined for this review. Characteristics of identified drug premises, such as the presence of fortifications, syringes, items associated with drug manufacturing or firearms, were often noted in event narratives. Search warrant documents were also examined in relation to the ten commands we audited for this review. Any additional information about the nature of the premises, or items that were seized which was contained in documents such as property seizure exhibit forms, was also recorded to present as complete a picture as possible of the characteristics of each identified drug premises.

It is important to note that the data presented in this chapter is derived from police descriptions of drug premises. In most cases, we do not know how the court dealt with the indicia that police noted. However, there were some court cases in which the indicia defining drug premises were discussed, and these cases are examined in this chapter.

In some event narratives, police directly relate their description of identified drug premises to the indicia that define drug premises in the Act. For example, in October 2002, police executed a search warrant<sup>266</sup> on a premises in western Sydney. The event narrative described the basis upon which charges were laid,<sup>267</sup> including the charge of allow premises to be used:

*Offence 1:*

*Allow premises to be used as a drug premises.*

- (a) The criteria for the identification of unit [address] as a drug premises has clearly been established. [details of the tenancy agreement of the person charged are outlined]...*
- (b) Police were authorised by a search warrant to entry the premises, and were wilfully delayed, prevented and obstructed from entering those premises, for a period, of one and a half minutes.*
- (c) The front door consisted of a wooden door, the standard Department doors have two (2) locks. The offender admitted to Police to having a third double dead lock added to the door, he further installed a second peep hole. The door was reinforced with steel plating around the locking area, which prevented the door jamb from breaking away upon force. The front window of the premises was boarded up. The window in the kitchen was blackened with dark in colour sheeting.*
- (d) During the search of the premises, Police located a used syringe in the bathroom garbage bin. Directly above, Police located a yellow in colour sharps container, which contained over 100 used syringes. The offender admitted on video, that friends injected themselves with drugs in that room, when [visiting] Police also located a full box of unused syringes, and medi-[swab]*

<sup>264</sup> Police Powers (Drug Premises) Act, s. 11(1).

<sup>265</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>266</sup> The type of search warrant is not noted.

<sup>267</sup> In addition to being charged with allowing his premises to be used as drug premises, the male lessee of the unit was also charged with possession of a prohibited drug, the possession of equipment for administering prohibited drugs, and with having goods suspected of being stolen.

patches inside the hallway cupboard. In the lounge room, Police further located used syringes, in the entertainment unit, and under the offender's bed. Inside the kitchen, Police located a large quantity of used syringes in side a open kitchen bin. Many syringes contained residue and traces of blood. Police located further empty boxes of Bulk Pack's of syringes of the same type and quality as located about the unit. Police also located during the search, a large number of plastic resealable bags, throughout the unit. Police also located a set of scales, which he stated, "You know what they are for."

- (e) During the search of the premises, Police located paperwork, that depicts orders, which is indicative of drug supply of the names and money values.<sup>268</sup>

Other event narratives that we examined did not directly relate the items that police seized to the indicia that define drug premises in the Act, but almost all event narratives outlined items that police seized from the premises. In a focus group we conducted at Cabramatta police, we asked officers about the role of event narratives, and one officer said:

*... it's your facts sheet ... ninety per cent of the time ... you just put in your proofs ... you set out your background ... the way I teach my staff, is that the event narrative is your facts sheet, so that the boss can read everything that's happened.*<sup>269</sup>

## 5.5. Indicia of drug premises in the Act

We will discuss the indicia set out in the legislation that may be used to define drug premises below. Data on how often police noted that particular indicia were evident on identified drug premises is provided, and any concerns that were brought to our attention about particular indicia are discussed.

### 5.5.1. Section 11(2)(a): Evidence that a police officer was wilfully prevented from entering drug premises

It is an offence to wilfully prevent a police officer from entering or re-entering premises.<sup>270</sup> Evidence that this had occurred is also one of the indicia that can be used to define drug premises.<sup>271</sup>

During the review period, six charges were laid for wilfully preventing a police officer from entering or re-entering premises. The incident documented below is an example of a circumstance in which this is alleged to have occurred.<sup>272</sup> As this extract from the event narrative also suggests, police suspected that their entry had been delayed so that the occupants could flush items down the toilet:

*Upon arrival at the premises Police knocked on the front door and announced their office. The defendant [name] opened the wooden door slightly and upon sighting police slammed it shut. A sound of the door being barricaded by objects inside was heard. Police again announced their office and lawful purpose.*

*At this point the defendant was sighted in the bathroom of the unit flushing something down the toilet. A sledge hammer was used to force the front door. Police at the rear of the premises could hear the occupants yelling "Flush it, flush it." Police eventually gain entry into the premises after forcing a bed and wooden sleeper away from the door. The defendant was sighted standing in the toilet flushing it. The defendant was requested to come into the lounge room, however refused and became violent. The defendant was forced from the toilet onto the bed where he continued to thrash his arms and legs. He was eventually handcuffed and restrained. Two other occupants of the unit who attempted to jump out of the rear window were also detained and handcuffed.*<sup>273</sup>

Later on, during the execution of the search warrant, the defendant referred to above requested a can of Coca Cola. Police gave him a drink, which he then emptied onto a table in the lounge room that "contained cannabis residue".<sup>274</sup> He was then taken to the police station, and charged with various offences, including allowing his premises to be used as drug premises, hindering and obstructing the execution of a search warrant, and resisting an officer in the execution of their duties.<sup>275</sup> However, we do not know if the obstruction of the police entry was used at court as indicia that the premises was drug premises.

<sup>268</sup> COPS event narrative, Greater Metropolitan Region, Drug Premises Incident 24.

<sup>269</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>270</sup> *Police Powers (Drug Premises) Act*, s. 9. It is not necessary for premises to be proved to be drug premises to be convicted of this offence.

<sup>271</sup> *Police Powers (Drug Premises) Act*, s. 11(2)(a).

<sup>272</sup> However, it appears that this person was charged under section 9 of the *Search Warrants Act 1985*, with the offence of obstructing a person executed a search warrant. Both this, and the offence in section 9 of the *Drug Premises Act* involve obstructing a person in the execution of a search warrant, except the maximum penalty is double the penalty that is contained in the *Drug Premises Act*. The other difference between the two offences is that the drug premises section 9 offence includes additional provisions that relate to delaying an officer from entering premises, giving alarm, and notifying another person of the presence of an officer.

<sup>273</sup> COPS event narrative, Greater Metropolitan Region, Incident 12, 24 October 2002.

<sup>274</sup> *Ibid.*

<sup>275</sup> *Ibid.*



## 5.5.2. Section 11(2)(b): fortifications

External or internal constructions, often referred to by police as fortifications, are indicia to which regard may be had in determining if premises are drug premises.<sup>276</sup> Also included are bolts, bars and chains, or any means or device which are likely to have been fitted to premises for the purpose of giving alarm, or of preventing, obstructing or delaying entry to a premises.<sup>277</sup>

One of the key concerns expressed in submissions to our discussion paper and Parliamentary debate was the inclusion of security measures as one of the indicia that can define drug premises. These concerns centre on the significance that should be attached to the presence of security on premises, and the types of security measures that could be mobilised as evidence that premises are drug premises. For example, it was argued that measures such as steel grills on windows and doors were commonplace security devices, and should not be used to define drug premises. In their submission to our discussion paper, the NSW Legal Aid Commission wrote that the “existence of security devices can equally be a reflection of concern with the avoidance of property crime rather than drug supply”.<sup>278</sup>

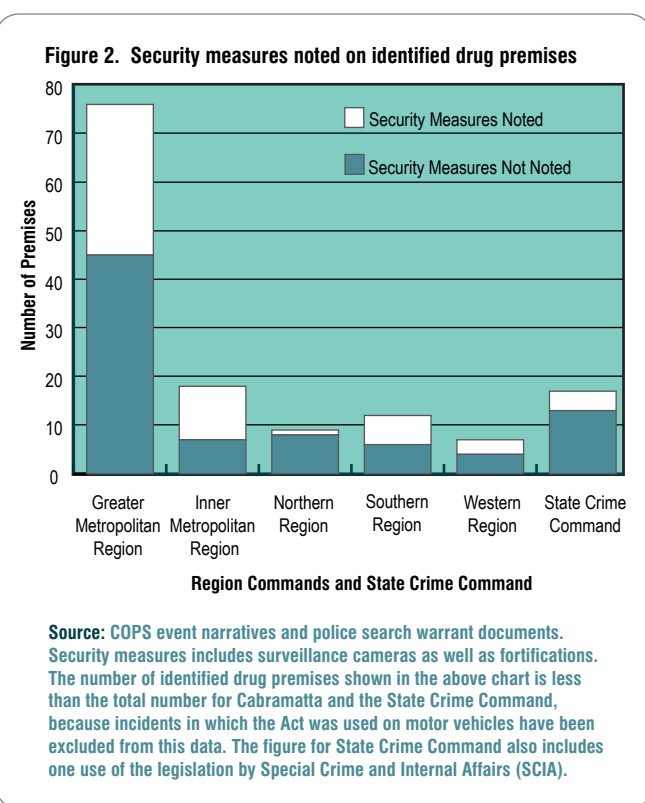
One member of the Legislative Council, during Parliamentary debate on the Act, also urged that it was “crucial to consider the conditions of a particular area to determine whether the security used is excessive”.<sup>279</sup> We sought advice from a home insurance agency about what they considered to be a reasonable level of security on premises in different parts of NSW. The home insurer provided us with a list of 331 suburbs and towns in NSW that were classified by the insurer as minimum security, and we were advised that in order for the minimum security needs to be met, the home must have:

*Double cylinder deadlocks and/or security grilles and/or key operated patio bolts fitted to all external accessible doors, and keyed locks and/or security grilles and/or keyed shutters fitted to all accessible windows, or an intruder alarm that meets our specifications.*<sup>280</sup>

As the data below indicates, the security measures that police describe on identified drug premises ranged from deadlocks and security grilles to sophisticated camera surveillance systems. In the following section, we will discuss types of security measures noted by police on identified drug premises and how often these occurred.

### 5.5.2.1. How often were fortifications noted by police on drug premises?

The table below shows the number of times security measures were noted by police in relation to identified drug premises. In all but one police region, the Inner Metropolitan, fortifications were noted in relation to less than half of the identified drug premises.



	Security Measures Noted	Security Measures Not Noted
Greater Metropolitan Region	45	31
Inner Metropolitan Region	7	11
Northern Region	8	1
Southern Region	6	6
Western Region	4	3
State Crime Command	13	4

<sup>276</sup> Police Powers (Drug Premises) Act, s. 11(2)(b).

<sup>277</sup> Police Powers (Drug Premises) Act, s. 11(2)(b).

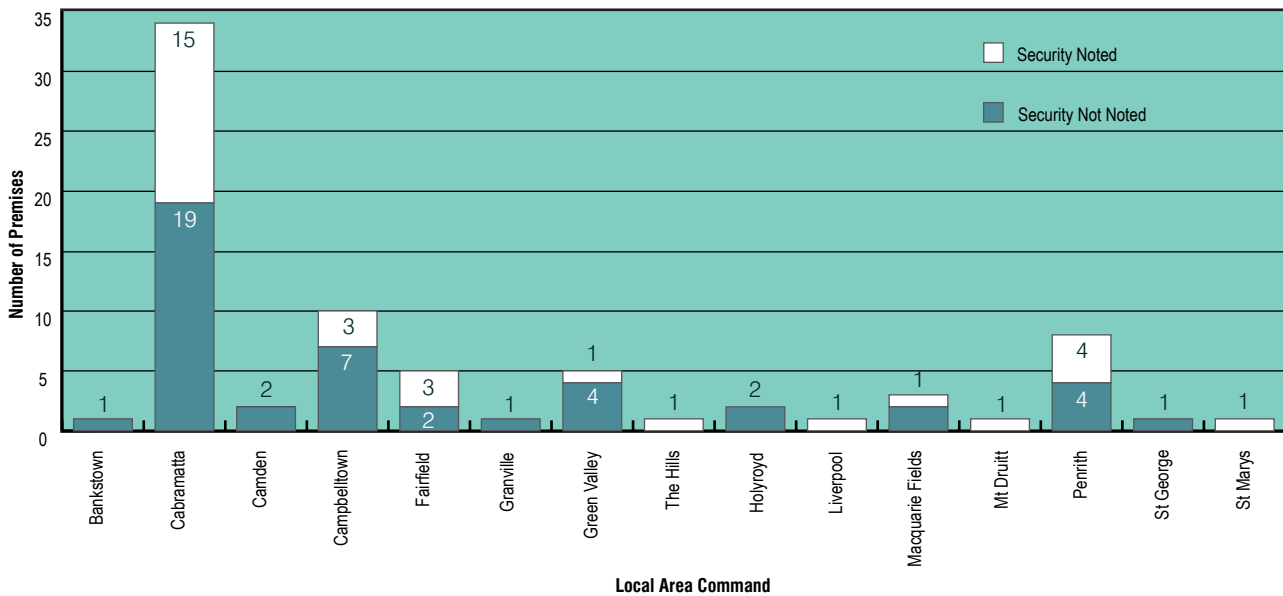
<sup>278</sup> Submission, NSW Legal Aid Commission, 30 July 2003.

<sup>279</sup> The Hon. R Jones, NSWPD, 7 June 2001, p. 14631.

<sup>280</sup> Insurance Agency, “List of Minimum Security Requirements in NSW”, Email, 3 February 2003.

Below, we have included a table that shows the security measures noted in respect of LACs in the Greater Metropolitan Region. A key impetus for the introduction of the legislation was to enable police to deal with fortified drug premises in Cabramatta. This table shows the proportion of fortified drug premises in all LACs in this region, including Cabramatta.

**Figure 3: Security Noted on Drug Premises in the Greater Metropolitan Region**



Source: COPS event narratives and search warrant documents.

### 5.5.2.2. Types of fortifications

Our research showed that some identified drug premises had sophisticated security measures, like CCTV surveillance systems, and others appeared to have only security bars and deadlocks. We compiled the following list of security measures noted by police in the Greater Metropolitan Region (excluding Cabramatta). The list shows the range of security measures located on 16 identified drug premises in that region:

- CCTV cameras, high colour bond fencing, light sensors, double hinges, dead bolts, and steel metal grills
- front door with three sliding bolts, and two other locks, security bars on doors and windows
- transactions occurred through a hole in a fortified screen door, surveillance camera on front eave of premises with monitor and microphone
- surveillance camera
- surveillance camera on top of roof of aluminium shed where a hydroponic set up was discovered
- premises have fortified measures such as two American pit bull terriers
- steel security door with hole cut in it, fortified at rear by extensions constructed of colour bond
- video security camera, rear door reinforced with metal and a small hole cut in it
- third double dead lock and second peep hole had been added, front window boarded up, window blackened with sheeting
- two CCTV cameras, one monitoring the front door, and one on the driveway, additional locking mechanisms on the front door, hole cut in fly screen door
- two uninstalled surveillance cameras
- unit is in a secure block, and is secured by a screen door and a deadlock on the front door
- CCTV camera in front window, monitor in lounge room, premises fully alarmed with back to base monitoring
- front door fitted with security screen
- video camera monitoring system, screens in lounge, bedroom, alarm device, four dogs, a safe and
- double locks, locked flyscreen, surveillance camera and savage dog, defendant is described as highly surveillance conscious in an intel report.<sup>281</sup>

<sup>281</sup> COPS event narratives, Greater Metropolitan Region.

In our chapter on Cabramatta, we discuss the types of security measures found on identified drug premises in that LAC.

In the Appendix to this report, we have documented the security measures police recorded on identified drug premises in other regions.

### 5.5.2.3. CCTV surveillance cameras and police scanners

As well as evidence of external or internal constructions, and other security devices, section 11(2)(b) of the Drug Premises Act includes any means or device for the purpose of giving alarm.<sup>282</sup> Two types of devices that were found on identified drug premises that could be used for this purpose were police radio scanners and surveillance cameras.

Surveillance cameras were more commonly noted in reference to identified drug premises in LACs in the Greater Metropolitan Region (excluding Cabramatta), and in the Southern Region, than in other LACs. Surveillance cameras were not noted as a feature of identified drug premises in Cabramatta.

These cameras were usually linked to television monitors in the lounge rooms or bedrooms of premises. The presence of surveillance cameras was a factor in the police assessment that these premises were drug premises. For example, one event narrative relating to the use of the Act in the Southern Region lists various items that were found on the premises, including drug paraphernalia, syringes and a mixing agent, and:

*... surveillance monitor linked to the external camera which was on at the time, a bright fluorescent light which was situated out the front of the house. Due to these items being located together with the police intelligence obtained, the premises was declared a "drug premises".*<sup>283</sup>

Surveillance cameras were most commonly found on identified drug premises in the Greater Metropolitan Region. In relation to one premises in this region, police noted that intelligence indicated that the occupants of the unit had:

*... gone to great lengths to fortify the unit from any police raids by reinforcing the doors and [defendant's name] had placed surveillance monitoring systems in various parts of the unit to monitor the movements of persons/vehicles attending the location.*<sup>284</sup>

The unit had two surveillance cameras, one monitoring the driveway, and another monitoring the front door. The pinhead CCTV camera at the front door was inside a milk box, and was attached, via a cable, to a monitor in the lounge room. The camera that was positioned to record images of the driveway was hooked up to a television monitor in the defendant's bedroom. According to the event narrative, this camera was:

*... protruding from his bedroom window and pointed towards the main driveway of the unit complex. This camera was attached and in full operation mode to a monitor/TV in [the defendant's] bedroom.*

*This camera has the capability of monitoring all pedestrian and vehicular traffic to the whole unit block at [address]. The defendant's would have been able to identify the police approaching from any direction in [street name].*<sup>285</sup>

Police also found a tool box containing a quantity of electrical items in the defendant's bedroom, which police believed had been used to install, repair or replace the CCTV cameras. According to the event narrative, the defendant admitted to police that he had installed the cameras in the unit.<sup>286</sup>

Another premises in the Greater Metropolitan Region had surveillance cameras and a scanner tuned into the local police frequency. Police also noted that the occupants of the premises had four dogs.<sup>287</sup> According to the event narrative, the surveillance on the premises consisted of a:

*... sophisticated video camera monitoring system installed at the front entrance of the house. The cameras installed enabled the defendant to monitor persons attending the front door of the house. A number of monitoring screens were situated in the lounge room and two screens in the main bedroom. Cameras attached to these monitors were secreted in a pot plant at the front of the house, a bedroom window frame and another camera attached to an alarm device fixed under the eaves at the front of the house.*<sup>288</sup>

<sup>282</sup> Police Powers (Drug Premises) Act, s. 11(2)(b).

<sup>283</sup> COPS event narrative, Southern Region, Drug Premises Incident 1.

<sup>284</sup> COPS event narrative, Greater Metropolitan Region, Drug Premises Incident 25.

<sup>285</sup> Ibid. Two occupiers of the premises were charged with allowing their premises to be used as drug premises and giving alarm/obstructing and delaying a police officer.

<sup>286</sup> COPS event narrative, Greater Metropolitan Region, Drug Premises Incident 25. Two occupiers of the premises were charged with both allowing their premises to be used as drug premises and with giving alarm/obstructing and delaying a police officer.

<sup>287</sup> COPS event narrative, Greater Metropolitan Region, Drug Premises Incident 34.

<sup>288</sup> Ibid.

During their search, police officers also found items that may have been used to protect the property and safety of the occupants, including a .22 calibre rifle and a floor mounted safe.<sup>289</sup> Police concluded that "from the set up of the house and the surveillance in place it is believed that the premises are used as a drug house."<sup>290</sup>

#### 5.2.2.4. *How security measures were considered at court*

Several court cases we examined for this review considered the security measures on identified drug premises. The questions that emerged concerned when the security devices had been affixed to the premises, and whether these measures were unusual for the area.

In one court case involving the use of the legislation in Cabramatta, there was some discussion of when steel bars had been put on a unit. The case involved a man who had been visiting the premises when the search warrant was executed, but had also previously lived on the premises. He was charged with being found on, entering or leaving drug premises. In court, the man said that the bars had been put on the unit while he was living there, but that the real estate agent had also put bars on five other units in the same block.<sup>291</sup> He was convicted of being found on drug premises, and was given a 12 month bond.<sup>292</sup>

In another case, also in Cabramatta, police intending to execute a search warrant on suspected fortified drug premises accidentally went to the unit next door when they went to execute the search warrant. In court, one of the police officers described what happened:

*... police then forced entry to a large iron door to gain access to the interior wooden door. At the same time, police were yelling out "Police, open the door, open the door". Police then attempted to force entry to the wooden door, it was then that I noticed the number 1 at the top of the door which was covered in paint of similar colour to the paint on the door. I then told the police to stop what they were doing.<sup>293</sup>*

When the police officer was cross examined, it was established that there was no difference between the fortification on both units. The police officer said:

*...A lot of places are fortified for - I mean some have you know - a lot have the big iron doors for legitimate purposes, some just have normal screen doors. But as a - its only an indicator... just one of the indicators.<sup>294</sup>*

The police officer also told the court that a hole had been cut in the "fortified screen door so [the occupants] can open the interior door and they will just do the drug transaction".<sup>295</sup> According to the officer, this was to avoid drug rip offs and cash robberies.<sup>296</sup> In relation to the fortifications, the magistrate found that there were certain conclusions that the court could draw from "the door being fortified, the hole in the screen".<sup>297</sup> This evidence, together with the presence of a syringe and foil and a razor blade on the premises, and police observations of people coming to the house, led the magistrate to conclude that the premises was a drug premises.

On another occasion, also in Cabramatta, a woman charged with allowing her premises to be used as drug premises had put bars on the windows and doors of the house which she was renting. At court, the fortifications on the premises were discussed at some length.<sup>298</sup> It was established that when the woman was first interviewed, she had told police that the bars had been put on the house because her house had been broken into. At court, her explanation for the security on the premises changed. The woman said that her former boyfriend was a jeweller and the bars were put on the house to protect valuable jewellery. When she was cross examined, the woman conceded that the house had not been broken into, but that someone had tried to get in by kicking the door, but had not succeeded.<sup>299</sup> In his judgement, the magistrate said the following in relation to the security on the house, and the woman's explanation for it:

*The window and door fortifications with bars, which I have to say is unusual, well, its not unusual for Sydney, but it is unusual to perform such substantial work on a rented flat. That may or may not have been too unusual had the explanation for it not been so worryingly or suspiciously inconsistent between the record of interview and Ms Non's evidence today in the witness box.<sup>300</sup>*

<sup>289</sup> Ibid. Police also found property they believed to be stolen, scales, and resealable plastic bags. The occupant was charged with allowing his premises to be used as drug premises, and was also charged with various firearms and goods in custody offences.

<sup>290</sup> COPS event narrative, Greater Hume Region, Drug Premises Incident 34.

<sup>291</sup> Liverpool Local Court, *Police v. Thuy Dat Vang*, 9 November 2001, p. 8

<sup>292</sup> Ibid.

<sup>293</sup> Liverpool Local Court, *Police v. Dang Nihn Nguyen*, 4 December 2001, p. 6.

<sup>294</sup> Ibid, p. 20.

<sup>295</sup> Ibid, p. 19.

<sup>296</sup> Ibid, p. 19.

<sup>297</sup> Ibid, p. 7.

<sup>298</sup> In addition, surveillance footage of a large people arriving at the premises, and leaving a short time later, the fact that people continued to arrive at the premises during the execution of the search warrant, and that a woman was found by police with two foils of heroin in her possession after she had just left the premises, were also relied upon by the prosecution to argue that the premises were drug premises.

<sup>299</sup> Liverpool Local Court, *Police v. Sim Non*, 29 June 2003, p. 10.

<sup>300</sup> Ibid, p. 18-19.

The woman was found guilty of allowing her premises to be used as drug premises and sentenced to 12 months imprisonment. The prosecution had also relied upon a range of other evidence, including police surveillance footage that showed up to 35 people coming to her kitchen window over a period of two and a half hours, each of whom left three or four minutes later.

### 5.5.3. Section 11(2)(c): Lookouts

According to the Drug Premises Act, a lookout is:

*A person who is in the vicinity of the premises for the purpose of communicating to any person on the premises to warn the person of impending police action.*<sup>301</sup>

The presence of lookouts, an indicia of drug premises under section 11(c) of the Act, was rarely noted by Police in relation to identified drug premises. In one instance, in an inner city suburb, police noted that a lookout had previously been seen at the premises.<sup>302</sup>

A police intelligence report that related to the use of the Act in Cabramatta, stated that police had received complaints from local residents that drug dealing was occurring at a particular unit. Police went to the unit, and stated in the intelligence report that on their arrival a "male was sitting out the front (cockatooing) and admitted he was from the unit".<sup>303</sup>

### 5.5.4. Section 11(2)(d) : Syringes and means or devices for using drugs

Syringes found in the possession of a person on the premises, or on the premises itself, are one of the indicia to which regard may be had in determining if premises are drug premises.<sup>304</sup> Also included is any means or device relating to the use of a prohibited drug.<sup>305</sup> Items such as tourniquets to assist the injection process or spoons used for mixing drugs may be encompassed by this section of the Act.

#### 5.5.4.1. Syringes

In his second reading speech, the Attorney General noted that piles of syringes are characteristic of some drug premises. One of the reasons for this, according to police, is that some premises have a no takeaways policy, requiring that when drugs are purchased, they must be injected prior to leaving the premises. Police believe that this practice is designed to foil the attempts of undercover officers to conduct controlled drug buys.<sup>306</sup>

For example, on one identified drug premises in the Western Region, police had evidence that a person who was supplying drugs from the premises was also supplying syringes, swabs and spoons to drug purchasers. In the event narrative, police stated that the person:

*... openly talks about making people use the drug in the premises and her supplying needles, swabs and spoons. The users then leave the premises with nothing on them to avoid Police attention. The defendant openly states that she does not use amphetamines and only gets it to supply it to others.*<sup>307</sup>

When the legislation was debated in Parliament, concerns were raised about the inclusion of syringes as a matter to which regard may be had in determining whether premises are drug premises. One member of the Legislative Council feared that the inclusion of syringes in the legislation may "work against the policy of trying to encourage as many drug users as possible to use clean syringes" and, in turn, may have a negative impact on NSPs.<sup>308</sup>

In a submission from one Area Health Service to our discussion paper, it was noted that individuals "addicted to substances are likely to have drug paraphernalia, including syringes, in their possession" and concern was expressed that:

*If this group was to retreat from accessing the Needle and Syringe Exchange Service this could have a serious impact on the health of the individual and the broader community.*<sup>309</sup>

<sup>301</sup> *Police Powers (Drug Premises) Act*, s. 3.

<sup>302</sup> COPS event narrative, Inner Metropolitan Region Drug Premises Incident 1.

<sup>303</sup> Intelligence Report 4, Cabramatta LAC, Drug Premises Incident 4.

<sup>304</sup> *Police Powers (Drug Premises) Act*, s. 11 (2) (d).

<sup>305</sup> *Police Powers (Drug Premises) Act*, s. 11 (2) (d).

<sup>306</sup> NSW Police, Mandatory Continuing Police Education Scheme Package, *Police Powers (Drug Premises) Act 2001*, p. 6.

<sup>307</sup> COPS event narrative, Western Region Event, Drug Premises Incident 6.

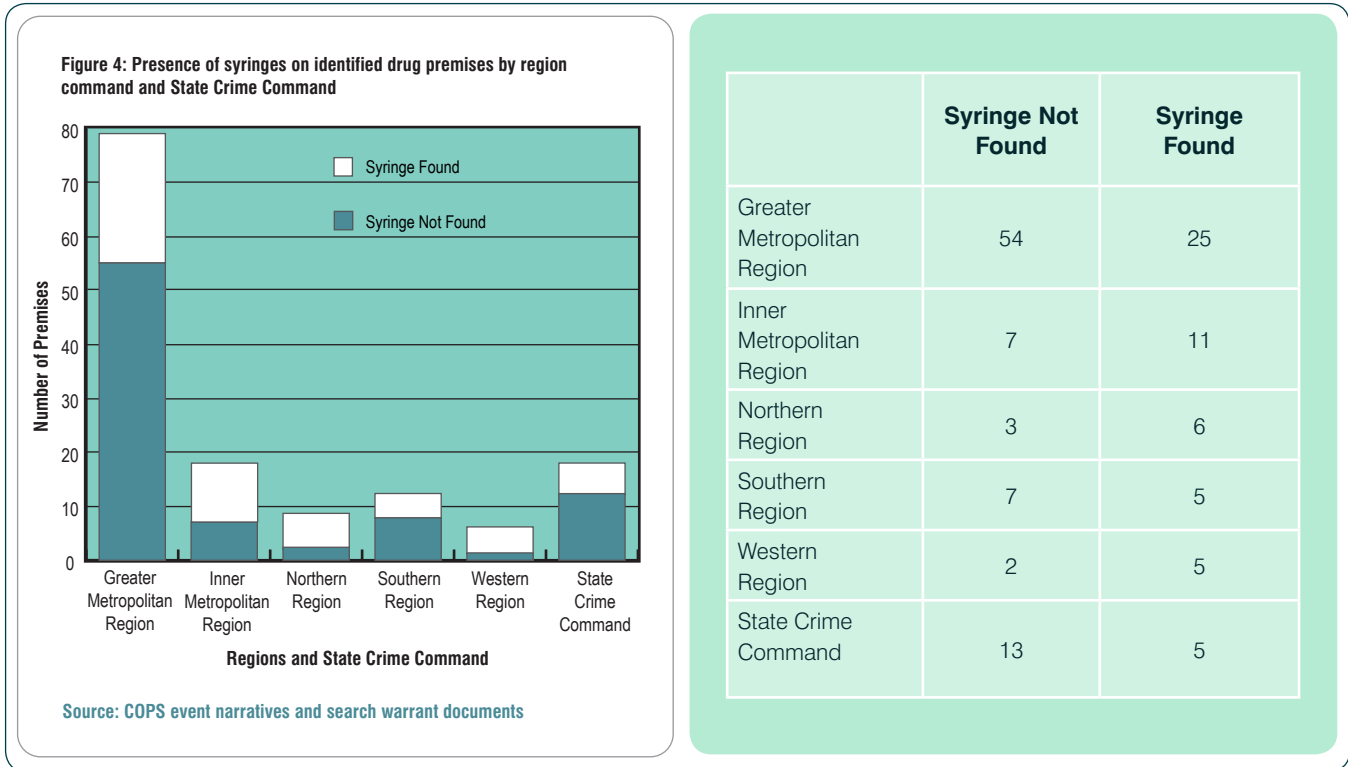
<sup>308</sup> The Hon. I. Cohen, NSWPD, 21 June 2001, p. 14999.

<sup>309</sup> Submission, Northern Sydney Area Health, 1 August 2003.

Another submission we received from a health professional stated that intravenous drug users are often encouraged to take extra syringes with them to ensure that they are not left without a clean one overnight or on a weekend.<sup>310</sup>

We are not aware of any cases in which syringes were the sole determinant in the police assessment that premises were drug premises.

The chart below shows the number of times police noted that they found syringes on identified drug premises.



Syringes were found at about 66% of the identified drug premises in the Inner Metropolitan, Northern and Western Region and just under 50% of the identified drug premises in the Southern and Greater Metropolitan Regions.

During the review period, we became aware of one incident in which the Drug Premises Act was used in relation to a safe house brothel in the Inner Metropolitan Region. When the drug premises search warrant was executed on these premises, officers seized a large quantity of used and unused syringes and other drug paraphernalia.<sup>311</sup>

We were advised that for several weeks after the incident, the safe house brothel refused to accept deliveries of clean syringes from the local needle and syringe exchange service. This appears to have been because there was some confusion after this incident about whether the safe house brothel should continue to stock clean syringes. According to a representative of a sex workers’ advocacy group we spoke to, the manager of the brothel said that “he would not be keeping any of that equipment on the premises, and that they had actually thrown out every single spoon, swab, cotton wool ball, syringe and related item”.<sup>312</sup>

Local health authorities also expressed their concern to us about the potential impact of this incident on public health.<sup>313</sup> They advised us that other safe house brothels in the area had also refused to accept clean syringes from their Needle and Syringe Exchange Service in the wake of this incident.<sup>314</sup>

Police in another LAC told us that they “never seize syringes because it’s too dangerous”.<sup>315</sup> This comment appears to relate to Occupational Health and Safety concerns about contracting blood born viruses from injuries that may occur when handling used syringes.

<sup>310</sup> Submission, Health Worker, Cabramatta, 30 July 2003.

<sup>311</sup> Section 7(1) of the Drug Premises Act allows police to seize any thing that relates to an activity prohibited under the *Drug Misuse and Trafficking Act 1985*, including a syringe.

<sup>312</sup> Focus Group, 14 April 2002.

<sup>313</sup> Ibid.

<sup>314</sup> Ibid.

<sup>315</sup> Focus Group, Cabramatta LAC, 2 July 2003.

### 5.5.5. Means or devices for drug use, manufacture or supply

According to section 11(2)(d) of the Drug Premises Act, another matter to which regard may be had in determining if premises are drug premises is any “means or device used in the supply, manufacture or use of a prohibited drug”.<sup>316</sup>

There are various items that are commonly used in connection with the unlawful supply of powder drugs like heroin, amphetamine, and cocaine. A mortar and pestle is sometimes used to break up large quantities of drugs. Cutting agents like glucose are used to dilute the strength of drugs, and to increase the profit gained from buying drugs wholesale and selling them on to the consumer. Powder drugs are usually cut into deals with objects like razors or the edges of plastic bankcards. Scales are often used to weigh deals for sale. Aluminium foil, small pieces of paper, or capsules are then used to wrap the drugs, and the deals may then be enclosed in tiny water balloons or in small, resealable plastic bags.

On one premises in the Northern Region, police document that they found in a bedroom a range of items that they associated with drug supply, and explain the significance that they attached to the items:

*On a table was a small square of aluminium foil with an amount of fine white powder upon it. The foil was flat, and beside it was located a set of scales and a small scraping tool. A roll of aluminium foil was nearby on the bed with cut out portions consistent with that containing the powder. The powder is believed to be heroin, and the circumstances make it obvious that the items were a single “deal” of the drug in the process of being made. The aluminium foil roll suggests that a number of such “deals” have been made in the past.*<sup>317</sup>

Concerns were raised in a submission to our discussion paper, and in a focus group we conducted with a drug advocacy group, about the inclusion of means or devices that are used in the supply or manufacture of a prohibited drug as indicia that can define drug premises. The East Area Tenants Service argued in their submission to our discussion paper that:

*... items such as aluminium foil, plastic bags or syringes may be sufficient evidence for an offence under the Act. It is a concern that many everyday domestic items, or items connected with personal use of a drug found at the premises may result in an offence with respect to the sale and manufacture of a prohibited drug.*<sup>318</sup>

The figures below show the number of times police noted that they found items associated with various aspects of drug supply on identified drug premises, including:

- drug packaging
- scales
- razors and other cutting implements
- cutting agents and
- other miscellaneous items associated with drug supply.

#### 5.5.5.1. Drug packaging

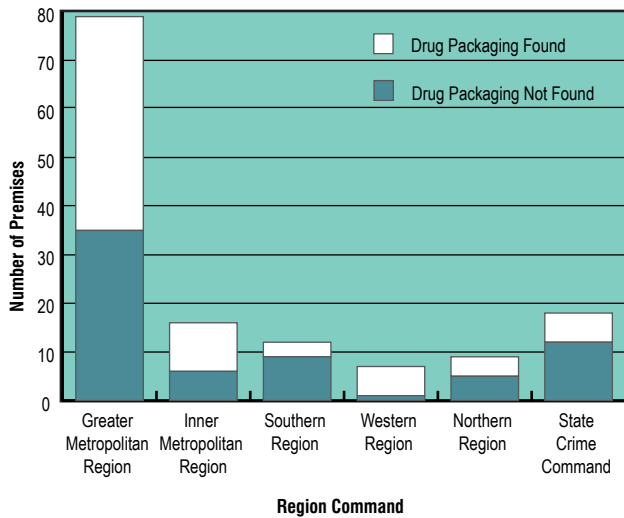
Drug packaging was the most common item associated with drug supply found on identified drug premises. This includes foil, balloons and plastic resealable bags, all of which are commonly used to package drug deals. On one occasion, packing tape was used to wrap a larger quantity of drugs. The table below shows for each NSW Police Region, the proportion of drug premises in which drug packaging was located.

<sup>316</sup> Police Powers (Drug Premises) Act, s 11(2)(d).

<sup>317</sup> COPS event narrative, Northern Region, Drug Premises Incident 3.

<sup>318</sup> Submission, East Area Tenants Service, received, 1 August 2003.

**Figure 5. Drug packaging found on identified drug premises**



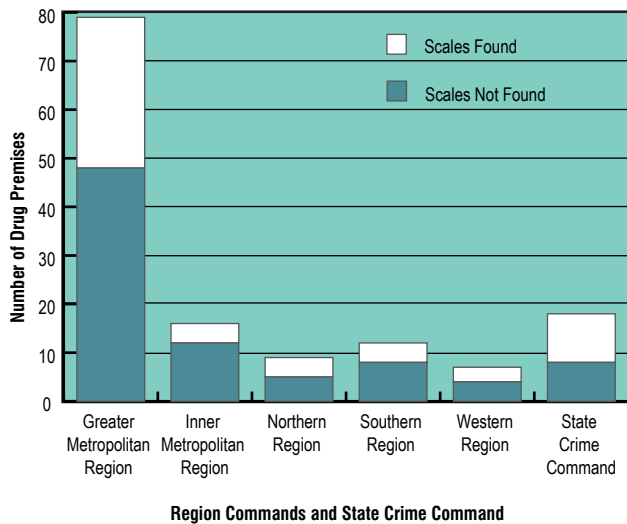
Source: COPS event narratives and search warrant documents.

	Drug Packing Not Found	Drug Packing Found
Greater Metropolitan Region	35	44
Inner Metropolitan Region	6	10
Southern Region	9	3
Western Region	1	6
Northern Region	5	4
State Crime Command	12	6

### 5.5.5.2. Scales

Scales are often used to weigh drug deals. The graph below shows the proportion of drug premises upon which scales were located.

**Figure 6. Scales located on identified drug premises**



Source: COPS event narratives and search warrant documents.

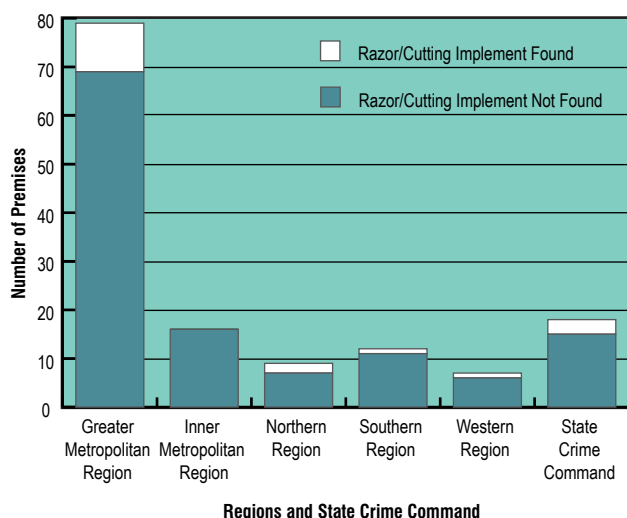
	Scales Not Found	Scales Found
Greater Metropolitan Region	48	31
Inner Metropolitan Region	12	4
Northern Region	5	4
Southern Region	8	4
Western Region	4	3
State Crime Command	8	10

### 5.5.5.3. Razors and cutting implements

Razors and other implements that can be used to cut drugs were found on drug premises less often than other items associated with drug supply. Stanley knives, a mortar and pestle, a small metal plate that police believe was used to cut drugs, and grinders (which are sometimes used to mulch cannabis), are included in cutting implements. On several occasions, police also seized pieces of mirror, which is a commonly used surface for cutting up drugs. As the figure below indicates, police located cutting implements on only a small percentage of drug premises.



**Figure 7. Razor or other cutting implement found on drug premises**



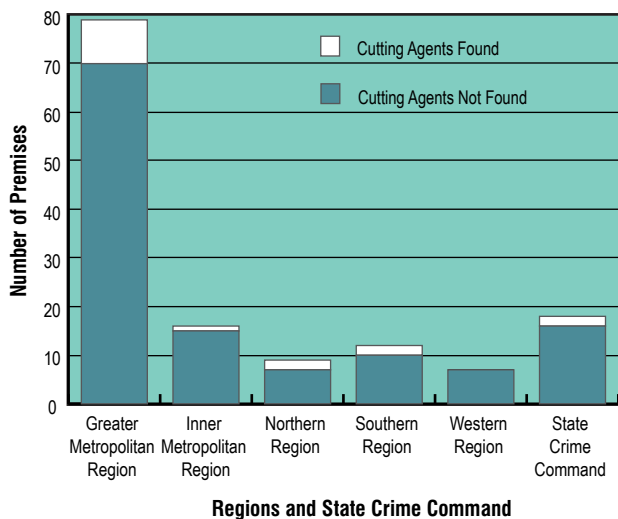
Source: COPS event narratives and search warrant documents.

	Razor/ Cutting Implement Not Found	Razor/Cutting Implement Found
Greater Metropolitan Region	69	10
Inner Metropolitan Region	16	0
Northern Region	7	2
Southern Region	11	1
Western Region	6	1
State Crime Command	15	3

#### 5.5.5.4. Cutting agents

Cutting agents include substances such as glucose and gelatine caps that can be used to dilute the strength of powder drugs. As the graph below indicates, cutting agents were found on a small number of drug premises.

**Figure 8. Cutting agents found on drug premises**



Source: COPS event narratives and search warrant documents.

	Cutting Agents Not Found	Cutting Agents Found
Greater Metropolitan Region	70	9
Inner Metropolitan Region	15	1
Northern Region	7	2
Southern Region	10	2
Western Region	7	0
State Crime Command	16	2

#### 5.5.5.5. Other items associated with drug supply that were found on drug premises

Various other items that are associated with drug supply were found on drug premises across the state. These items, and the regions and command they were located in, are set out below.

**Table 4. Miscellaneous items associated with drug supply found on drug premises**

Greater Metropolitan Region	Hydroponic equipment/apparatus (found on two premises) and a heat sealing machine.
Southern Region	A foil pipe that police allege was used to flush drugs down the toilet.
Western Region	Hydroponic equipment/apparatus (found on one premises).
State Crime Command	A hydraulic press and two metal plates that related to its use and a heat sealing machine

Source: COPS event narratives and search warrant documents.

Hydroponic equipment, which can be used to cultivate cannabis indoors, was found on several drug premises. Although a reasonable belief that cannabis is being cultivated cannot provide a basis of a drug premises search warrant to search premises,<sup>319</sup> police may nonetheless be able to lay charges for cannabis related offences if cannabis and or/hydroponic equipment is found on the premises.

#### 5.5.5.6. Items associated with drug manufacture

Section 11(2)(d) includes any means or devices used in the manufacture of prohibited drugs. Almost all uses of the Drug Premises Act across the state involved premises that were suspected of involvement in drug supply, rather than drug manufacture. It was relatively rare for police to find items associated with drug manufacture on identified drug premises.

Items associated with drug manufacture were found on four premises in the Greater Metropolitan Region. These items were:

- a tablet/pill pressing machine
- laboratory equipment/glassware (found on two premises) and
- precursors (found on three premises).<sup>320</sup>

On one premises, presumptive tests conducted by scientific officers detected the presence of pseudoephedrine in various spots throughout the premises, but police did not find laboratory equipment.<sup>321</sup> In this incident, police did find a solvent, which they believed was acetone, a substance commonly used in the manufacture of amphetamines, 200 loose Panadol tablets and 12.3 grams of amphetamines.<sup>322</sup> Police stated in the event narrative that they had statements from a number of persons that “implicate the defendant in the manufacture of amphetamines at that address”.<sup>323</sup> He was charged with allowing his premises to be used as drug premises, possessing a precursor with intent to manufacture prohibited drugs, and drug manufacturing.<sup>324</sup>

In another incident, a range of drugs<sup>325</sup> including various types of amphetamine in both capsule and powder form were located. One of the occupants of the premises later admitted to having “taken part in the manufacture of all the amphetamine-based capsules located during the course of the search warrant”.<sup>326</sup> No other evidence of drug manufacturing was found on the premises when the search warrant was executed.

On another occasion, police executed a drug premises search warrant on a house that they believed was being used for drug manufacture and supply.<sup>327</sup> When they searched the premises, they found scales, syringes, \$3,805, 2.9 grams of cannabis, and 1,821 pseudoephedrine tablets. Most of the tablets were still in the packaging and chemist bag they had been bought in. Police also found “recent receipts ... issued by a variety of different chemist shops” amongst the tablets. Police concluded in the event narrative that:

*Items that, when view in conjunction [with] the aforementioned large quantities of cash and pseudoephedrine based tablets, led police to form the view that the defendant’s premises was a drug premises, as defined by the Police Powers (Drug Premises) Act 2001, in that it was being used for the supply and/or manufacture of prohibited drugs, other than cannabis.*<sup>328</sup>

<sup>319</sup> Police Powers (Drug Premises) Act, s. 3.

<sup>320</sup> COPS event narratives, Greater Metropolitan Region, Incidents 13, 33, 35 and 37.

<sup>321</sup> COPS event narrative, Greater Metropolitan Region, Drug Premises Incident 33.

<sup>322</sup> Ibid.

<sup>323</sup> Ibid.

<sup>324</sup> Ibid.

<sup>325</sup> The drugs found on the premises included amphetamine and cannabis. COPS event narrative, Greater Metropolitan Region, Incident 35, 23 November 2001.

<sup>326</sup> COPS event narrative, Greater Metropolitan Region, Drug Premises Incident 35. This person was charged with organising drug premises, and with various drug offences, including possession, manufacture, cultivation and supply of prohibited drugs.

<sup>327</sup> COPS event narrative, Greater Metropolitan Region, Drug Premises Incident 37.

<sup>328</sup> Ibid.

However, no other evidence of drug manufacturing was located on the premises. The occupant of the premises was charged with various offences including allowing his premises to be used as drug premises, and with possession of prohibited drugs.<sup>329</sup>

The State Crime Command used the Act on two clandestine laboratories, and found a quantity of laboratory equipment on each premises. Items found by police included:

- thermometers, funnels, plastic hoses, separating funnels, stirrer bars, laboratory glassware and a liquid petroleum gas (LPG) bottle and
- numerous glass jars and glassware containing a number of different chemicals, numerous pieces of glassware and equipment associated with the manufacture of amphetamine and methylamphetamine.<sup>330</sup>

In one other incident, documented in the chapter, "Targeting drug supply", State Crime Command were involved in an operation that related to drug manufacture in which several premises were targeted. One of these premises was a clandestine laboratory. Charges under the Drug Premises Act were not laid in connection with the laboratory itself, but drug premises and drug manufacturing charges were laid against people on two other premises that were targeted in the operation.

On one premises in the Southern Region, police found what they believed was an attempt at the manufacture of amphetamines - a brown substance caked onto the bottom of a dish - and an esky with liquid inside that police believed was the first stage in the manufacture of amphetamines.<sup>331</sup> However, according to the event narrative, one of the occupants told police that the substance was "merely waste from storing food in the esky over a long period."<sup>332</sup>

We are not aware of any incidents in which items associated with drug manufacture were found on identified drug premises in Cabramatta, the Inner Metropolitan Region, the Northern Region or the Western Region.

#### 5.5.5.7. Clandestine laboratories

During the review period, we are aware of three occasions on which the Drug Premises Act was used in relation to clandestine laboratories. Two of these related to uses of the legislation by State Crime Command. The use of the Act by State Crime Command to deal with clandestine laboratories is discussed further in the chapter "Targeting drug supply".

In another incident, in a LAC in the Greater Metropolitan Region, general duties police inadvertently located a clandestine laboratory in a garage. They had been called to a house in western Sydney one evening in connection with a domestic dispute. The officers were questioning a man in the backyard who was bleeding from injuries to his right arm. As police were speaking to the man, they looked through the broken garage window and saw a number of glass beakers, electronic scales and what appeared to be a pill press. The occupants did not allow police entry to the garage and became hostile.<sup>333</sup>

The two police walked out to the front of the house and contacted their LAC. According to a police officer we spoke to about the incident, police did not believe that they had the power to stay on the premises.<sup>334</sup> While they were waiting for other officers to arrive with a search warrant, and for police from the Clandestine Laboratory Team to arrive, they saw four people enter the garage. In the event narrative, police document what happened next:

*A short time later police heard smashing glass and noticed a small fire in front of the garage door then heard someone jumping the rear colourbond fence.*

*Soon after this police saw the defendant [name] and [name] walk from the vicinity of the rear garage door. At this time the inside of the garage was engulfed in flames.*

*Firebrigade attended the location and extinguished the flames. At this time drums of chemicals including Methanol, Acetone, Hydrogen Peroxide Hydrochloric acid and distilled water were located in the garage.*

*Police from Clandestine lab team arrived and were able to identify these chemicals as being used in the manufacture of MDMA (ecstasy). Enquiries so far indicate enough chemicals to manufacture a large commercial quantity of MDMA.<sup>335</sup>*

<sup>329</sup> Ibid.

<sup>330</sup> COPS event narratives, State Crime Command, Drug Premises Incidents 9 and 15.

<sup>331</sup> COPS event narrative, Southern Region, Drug Premises Incident 2.

<sup>332</sup> Ibid.

<sup>333</sup> COPS event narrative, Greater Metropolitan Region, Incident 13.

<sup>334</sup> Personal communication, Police Officer, Greater Metropolitan Region, 7 August 2003.

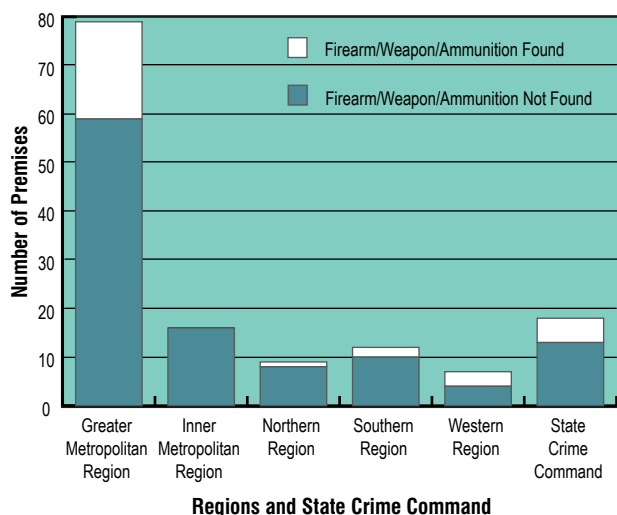
<sup>335</sup> COPS event narrative, Greater Metropolitan Region, Drug Premises Incident 13.

The man was charged with allowing premises to be used as drug premises, and with manufacturing a commercial quantity of prohibited drugs. Another occupant of the premises was charged with being found on drug premises.<sup>336</sup>

### 5.5.6. Section 11(2)(e): firearms and prohibited weapons

Another indicia of drug premises is evidence of firearms or prohibited weapons, the possession of which is unlawful.<sup>337</sup> The figure below shows the number of times firearms, weapons, or ammunition were located on identified drug premises.

**Figure 9. Firearms, weapons and ammunition located on drug premises**



Source: COPS event narratives and search warrant documents.

	Firearm/Weapon/Ammunition Not Found	Firearm/Weapon/Ammunition Found
Greater Metropolitan Region	59	20
Inner Metropolitan Region	16	0
Northern Region	8	1
Southern Region	10	2
Western Region	4	3
State Crime Command	13	5

Ammunition and several weapons were located on three premises in the Western Region. On these premises police found:

- a significant quantity of .303 ammunition
- two firearms and
- knuckle dusters, and a length of wood in the form of a baton.<sup>338</sup>

On one premises in the Northern Region, police found an iron bar, axes, a broken billiard cue with a handle attached, and an extendable baton.<sup>339</sup>

Weapons were located on two premises in the Southern Region. On one drug premises, police found a sawn off shotgun and ten live shotgun shells. On another, they found a set of thumb cuffs and a set of handcuffs hanging from the ceiling.<sup>340</sup>

A weapon of some type, or ammunition, was located on 20 premises in the Greater Metropolitan Region. Firearms were located on ten of these drug premises. On some premises, police located ammunition but no firearms, or they located other types of weapons. The items police found on 14 drug premises in the Greater Metropolitan Region (excluding Cabramatta) are listed below:

- air rifle, rifle, and homemade weapon (type not specified)
- 9 mm handgun
- 0.22 calibre pistol with magazine and a number of rounds, 9mm semi automatic pistol
- two 0.22 calibre rifles, seventeen boxes of 0.22 calibre ammunition with fifty rounds in each, twenty-two rounds of 0.22 calibre loose ammunition, and a silencer and a star knife

<sup>336</sup> Ibid.

<sup>337</sup> *Police Powers (Drug Premises) Act*, s. 11(2)(e).

<sup>338</sup> COPS event narratives, Western Region, Drug Premises Incidents 4, 5 and 6.

<sup>339</sup> COPS event narrative, Northern Region, Drug Premises Incident 3.

<sup>340</sup> COPS event narratives, Southern Region, Drug Premises Incidents 1 and 13.

- magnum revolver and a 0.357 magnum bullet
- two pistols, a pump action shotgun, metal silencer, nine 0.22 bullets, one 0.303 bullet and knuckle dusters
- apach nail gun
- 0.22 calibre live rounds
- 0.22 calibre bullet
- winchester rifle, 0.32 calibre pistol, fifty-six 12 gauge shotgun shells, forty 0.32 calibre rounds and forty seven 3030 calibre rounds
- replica pistol
- 0.22 calibre rifle and ammunition
- 0.22 calibre automatic pistol with a full magazine, ammunition, 2 magazines and a pipe bomb and
- one bullet.<sup>341</sup>

In Cabramatta, weapons and related items were located on six identified drug premises. A .22 calibre rifle was located on one,<sup>342</sup> and the following weapons and related items were located on the remaining five identified drug premises:

- a meat cleaver, several knives, one with a black rod attached to it
- nine rounds of ammunition
- a samurai sword
- a knife and
- a box of ammunition with ninety-seven live rounds in it.<sup>343</sup>

Officers from the State Crime Command found firearms and weapons on five premises in relation to which the Drug Premises Act was used. These items were:

- three firearms, a double barrel shogun, a 12 gauge shotgun and a marlin rifle
- a large quantity of ammunition
- a twelve gauge shotgun, a bolt action rifle, assorted centre fire, rim fire and shotgun ammunition and a machete in a sheath and a cross bow
- a .25 calibre pistol and nineteen .25 calibre rounds of ammunition and
- a Chinese assault rifle, two military carbines, one single barrel shotgun, numerous rounds, bullets, homemade mace with steel ball attached to a handle by a chain.<sup>344</sup>

In their submission to our discussion paper, the NSW Legal Aid Commission argued that the possession of weapons, particularly those which are also capable of being used as household utensils, such as knives, “are not necessarily linked with the presence of drugs, or indeed that the premises are drug premises within the meaning of the Act.”<sup>345</sup>

As we have noted elsewhere in this chapter, it is difficult to determine the extent to which the presence of a firearm or weapon was significant to how drug premises were defined at court. Finds of firearms or other weapons on identified drug premises did not emerge as an issue in any of the court proceedings that we examined for this review, though one magistrate, quoted in “Case Study 3” in this chapter, commented on the inclusion of firearms as an indicia of drug premises in the Act.

### 5.5.7. Section 11(2)(f): documents and records kept in connection with drug supply or manufacture

Another indicator that can be used to define drug premises is documents or other records that appear to have been kept or used in connection with the unlawful supply or manufacture of a prohibited drug, including computer records.<sup>346</sup>

<sup>341</sup> COPS event narratives, Greater Metropolitan Region, Drug Premises Incidents.

<sup>342</sup> COPS event narrative, Cabramatta LAC, Drug Premises Incident 36.

<sup>343</sup> COPS event narratives, Cabramatta LAC, Drug Premises Incidents 3, 8, 12, 18 and 37.

<sup>344</sup> COPS event narratives, State Crime Command and Police Integrity Commission, Drug Premises Incidents 1, 2, 5, 8 and 13.

<sup>345</sup> Submission, NSW Legal Aid Commission, 30 July 2003.

<sup>346</sup> *Police Powers (Drug Premises) Act*, s. 11(2)(f).

Documents that police associated with drug supply were found on 19 drug premises in the Greater Metropolitan Region, which is about 25% of the premises in that region. Police found documents associated with drug supply on a small number of premises in other regions. The table below shows the number and type of document that police believed to be associated with drug supply or manufacture that was located on identified drug premises.

**Table 5. Items associated with supply or manufacture of drugs**

Region/command	Type of item (number of premises at which item located)
Greater Metropolitan Region	Tick sheets (found on 5 premises)
	Customer ledger (2)
	Paper work or notepad depicting names and amounts of money owing (2)
	Paper work that depicted orders indicative of drug supply(2)
	Documents outlining drug transactions (1)
	Diary with drug weights and references to bag numbers (1)
	Prohibited drug price list (1)
	Type of document not specified (2)
	Paper with defendant's mobile phone written on it (2)
	Raffle ticket book (1)
Inner Metropolitan Region	Number of figures relating to calculations, (no further details provided)
Northern Region	A note pad with names of known drug users and business cards
Southern Region	Tick sheet
Western Region	Tick sheet (found on 2 premises)
State Crime Command	Documents in two brief cases, including instructions for creating a clandestine laboratory and the steps involved in manufacturing amphetamine and receipts from a laboratory supplies company
	Computer hard drive

Source: COPS event narratives and police search warrant documents

Tick sheets were one of the more common types of documents found. A tick sheet is a list of creditors' names and amounts of money owing. These came in a variety of forms, including a list written on a wall, a list on the side of tissue box, a diary, and writings related to drug supply on old TAB tickets.

On one identified drug premises in Cabramatta, police found a book of raffle tickets. The search of the premises was conducted following a series of street-level undercover drug buys. According to the event narrative, on the second occasion that drugs were purchased, the undercover officer had been told by the occupant of the premises that "each time [the undercover officer] bought from him, he would receive a raffle ticket. Once three tickets were obtained, a free buy could be obtained".<sup>347</sup> Another undercover buy was conducted, and an orange raffle ticket was provided, but on the following occasion when \$100 worth of heroin was purchased from the occupant, it is noted that:

*The [undercover officer] inquired about the issue of a raffle ticket, however, the defendant stated that he did not do that anymore as he was losing money.*<sup>348</sup>

Shortly after, the man was arrested by police. During a search of his home, police located items including water balloons, scales, money that matched that previously used by the undercover officer to purchase drugs, and an orange raffle ticket book with tickets one to twenty missing.<sup>349</sup>

<sup>347</sup> COPS event narrative, Cabramatta LAC, Incident 25.

<sup>348</sup> Ibid.

<sup>349</sup> The man received a four year gaol sentence for "supplying drugs on an ongoing basis", under section 25A of the *Drug Misuse and Trafficking Act*, and a one year gaol sentence, to be served concurrently, for organising drug premises. *Police v Hoang Van Nguyen*, 22 August 2003, p.1.

### 5.5.8. Section 11(2)(g): large amounts of money unaccounted for

The quantities of money that were found on identified drug premises are detailed in the chapter on targeting drug supply.

### 5.5.9. Section 11(2)(h): presence of drug affected people

Evidence that there were persons found on premises who appeared to be affected by prohibited drugs is the final indicia of drug premises in the Act.

Concerns were expressed in submissions to our discussion paper, and in parliamentary debate about the Act, that the term drug affected was too subjective.<sup>350</sup> We have considered some instances in which drug affected people were found on premises.

For example, in one event narrative that relates to the use of the legislation in the Northern Region, police noted that during the execution of the search warrant, both defendants appeared to be at least mildly affected by a drug. However, it is difficult to determine what weight police attached to this observation.<sup>351</sup> Police also note in the event narrative that when they searched the house, they found scales, aluminium foil, a small cutting tool, cannabis and what they believed to be heroin. Police noted that they also had evidence of a number of people coming and going from the premises.<sup>352</sup>

There were also instances, which we discuss below, when police entered a house to execute the search warrant and found people in the process of injecting drugs. In these instances, police note that illicit drug use had taken place on the premises and sometimes charges of self administration were laid.

## 5.6. How many indicia were used to define identified drug premises?

Concerns have been raised that charges under the Drug Premises Act were laid on the basis of only a few of the indicia set out in Section 11 of the Act. A submission we received from the NSW Legal Aid Commission included the following comments:

*It is the concern of solicitors within the Legal Aid Commission that charges laid under the legislation are on the basis that only a few of the indicia set out in Section 11 have been met and that the evidence does not support a conclusion that the premises are being used for the supply or manufacture of prohibited drugs as required by Section 11(1).<sup>353</sup>*

There were some court cases in which the number of indicia that had been used to define particular drug premises was at issue, and these cases are discussed below. In one court case, the definition of the drug premises became a crucial question of the case.

However, in most of the court cases that we examined, there was little discussion of the various indicia that police had used to define particular drug premises. This was often because the person pleaded guilty to the charge, so the question of whether the premises were drug premises was not in dispute. On other occasions, most of the argument in the court case centred on the relationship of the person to the premises, rather than the nature of the premises itself.

### 5.6.1. Are drug premises defined by a range of indicia?

Due to the relatively small number of court proceedings in which the definition of drug premises was discussed, it is difficult to determine if, and to what extent, drug premises were defined by a small number of the indicia set out in the Act. In a focus group we conducted, one police officer commented that:

*Even though you've got those indicators, how many of those indicators are required is not clearly defined, in some circumstances, you may only have two or three, whereas in other places you may the whole ambit of all the indicators.<sup>354</sup>*

Event narratives and other documents we examined for this review, such as briefs of evidence, suggest that police usually defined drug premises using a range of indicia. For example, the following extract from an event narrative that relates to the use of the Act in the Greater Metropolitan Region is fairly typical of the events we examined:

*The nature of the items located at the premises being, drugs, camera surveillance, scanners on police frequencies, bongs, scales and resealable plastic bags, the frequency of people attending the premises have lead police to believe the premises are being used for the supply of prohibited drugs (Drug premises). The defendant was located on those drug premises.<sup>355</sup>*

<sup>350</sup> Submission, NSW Users and Aids Association, and Submission, East Area Tenants Service. This concern was also raised in parliamentary debate on the Act, by the Hon. R. Jones, NSWPD, 7 June 2001, p. 14631.

<sup>351</sup> COPS event narrative, Northern Region, Drug Premises Incident 3.

<sup>352</sup> Ibid.

<sup>353</sup> Submission, Legal Aid Commission,

<sup>354</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>355</sup> COPS event narrative, Greater Metropolitan Region, Drug Premises Incident 10.

Another event narrative, also from the Greater Metropolitan Region, suggests that the particular premises was defined by a series of factors:

*OFFENCE 11: ALLOW PREMISES TO BE USED AS DRUG PREMISES- 1ST OFFENCE*

*As stated earlier, two undercover operatives were taken to outside [address], premises by another target of Operation [name]. On both occasions quantities of amphetamines and ecstasy were supplied to the undercover operatives after the target had obtained drugs from the subject premises. The premises have fortified measures such as two American pit bull terriers on guard outside the house. Two radio scanners were located in the bedroom of the defendant, together with two .22 calibre firearms. A set of expensive electronic scales were located in the kitchen area. Numerous small resealable plastic bags were also located in the kitchen premises. This indicates drugs being supplied from the premises.<sup>356</sup>*

## 5.6.2. What weight should be accorded each criterion?

The legislation does not provide any guidance on the weight particular indicia in the Act should be accorded. Concerns were raised that section 11 of the Act setting out the eight indicia that can be used to define drug premises gives “equal weight to unequal factors”.<sup>357</sup> In addition, the NSW Users and Aids Association argued that:

*What constitutes a drug house according to the Act is vague and subjective. The wording enables a drug house to be defined on the basis of any one of a series of indicators and theoretically any one could be used.<sup>358</sup>*

Several court cases in which it was considered that there were insufficient indicia to consider the premises drug premises are discussed below.

### Case study 4.

#### Syringers, money and drugs

Police reported that they had received numerous complaints from the community about possible drug related activity at a unit.<sup>359</sup> They conducted surveillance on the premises, and applied for, and were granted, a drug premises search warrant. When police arrived, there were three men on the premises.<sup>360</sup>

In the court case relating to one of the defendants who was charged with being found on drug premises, it was argued by the defence first that the premises was not a drug premises, and second, that if it was, the defendant had a reasonable excuse for being there.<sup>361</sup>

Evidence found on the premises, and discussed at court, included a radio scanner, a book of Australian East Coast Register of Government Radio Frequencies, several types of drugs, including some cannabis and foils of heroin, money, a syringe and a document that police claimed was a ledger of drug transactions were discussed at court. The security on the premises, lack of furniture, and lack of food in the kitchen, were also discussed.<sup>362</sup>

During the cross examination of a police witness, it was established that amounts of \$5 and \$10 appeared on the ledger, and the police officer conceded that it was therefore unlikely to be record of drug transactions.<sup>363</sup> In relation to the security at the premises, the following exchange took place between the defendant’s lawyer and a police witness:

*[Defence Lawyer]: Can I just deal with this screen door? The screen door that was attached to these premises was a standard flyscreen, is that correct?*

*[Police witness]: I wouldn’t call it a standard flyscreen, we just refer to them as a security door.*

*[Defence Lawyer]: I know what you call them but it’s an aluminium door, is that correct?*

*Police witness: Yeah I believe the metal was aluminium, yes.*

*[Defence Lawyer]: Which was not fixed with any special locks?*

*Police witness: No, no it didn’t appear to, no.*

*[Defence Lawyer]: There were no bolts for example, bolts with padlocks on it?*

*Police witness: No, none of those.*

*[Defence Lawyer]: It was a door that was not locked when you attended?*

*Police witness: No, no it wasn’t.<sup>364</sup>*

<sup>356</sup> COPS event narrative, Greater Metropolitan Region, Drug Premises Incident 18.

<sup>357</sup> Submission, North and North West Community Legal Service, 1 August 2003.

<sup>358</sup> Submission, NSW Users and Aids Association, received 5 August 2003.

<sup>359</sup> The unit was one of the two non-domestic drug premises that we describe later in this chapter.

<sup>360</sup> COPS event narratives, Inner Metropolitan Region Incident 6.

<sup>361</sup> Local Court, Downing Centre, *Police v. Woody Quilla*, 5 June 2002, p. 2.

<sup>362</sup> Ibid

<sup>363</sup> Ibid, p. 16. A police witness told the court that a “unit of drugs” usually cost \$50 in that area.

<sup>364</sup> Ibid, p. 18.



The magistrate noted that there were only a few of the eight indicia of drug premises set out in the Act present on this particular drug premises, and that the door was a normal screen door, and that no additional bolts had been attached. In the judgement, the magistrate said:

*In relation to the charge of being on drug premises attention has been drawn to the second reading speech of the Attorney General when the bill was introduced and that speech indicates the clear legislative intent of the provisions of this Act and it is with an eye to the circumstances that led to the Act that s 11(2) indicates eight factors which are to be taken into account in determining whether premises are drug premises of the purposes of that Act and, of course, I note that they are not exclusively the factors to be taken into account.*

*As I look at the eight factors it is not disputed that some money was found on the premises, a syringe has been found on the premises with some drugs but there are no other of the factors indicated in s 11(2) which are present in this particular matter.*

*In those circumstances and taking the prosecution case at its highest and having regard to the clear legislative intention I am of the view that there is no prima facie case been established [sic] in relation to the charge of being found on drug premises.<sup>365</sup>*

## Case study 5.

### Money and items associated with drug supply

In another incident, in the Inner Metropolitan Region, police conducted surveillance on premises and, according to the event narrative, "observed a number of unknown persons attend the premises and stay only for a short period of time before leaving".<sup>366</sup> Police applied for a drug premises search warrant as a result of police intelligence and the surveillance that had been conducted over the previous week.

When they executed the search warrant, police found plastic resealable bags, foil, scales, bags containing white powder, some cocaine,<sup>367</sup> a small bag of cannabis leaf, syringes, swabs and \$1065. Two people were charged with allowing the premises to be used as drug premises, and one with being found on drug premises.<sup>368</sup>

In the court proceeding relating to the two people charged with allowing their premises to be used as drug premises it was held that the indicia of drug premises were insufficient to establish that the house was drug premises. The magistrate noted that the scales were not working. In relation to the other indicia of drug premises that were located at the premises, he said:

*In relation to the evidence before the Court it would seem to me that it's only in relation to D and G of those indicators and whilst I note that the section 11 subsection 2 refers to regard may be had to any or all of the following, in my view this is a significant matter to take into account in relation to the issue of prima facie case.<sup>369</sup>*

The indicia of D and G referred to above are evidence of any means or device used in the supply, manufacture or use of a prohibited drug and evidence of a large amount of money that is not accounted for by the occupier of the premises.<sup>370</sup>

The prosecution relied upon the finding of 0.46 grams of cocaine, plastic resealable bags, and the money to argue that the premises were used for supply. In considering the argument put by the prosecution, the magistrate stated:

*There is certainly no evidence or any indication of how the premises were entered or any indication at all that there were people frequenting the premises. What I'm asked to infer from the evidence before me is that on the definition of supply as set out in the Drug Misuse and Trafficking Act, that is section 3 of that Act, that I should have regard to that particular part of the definition of supply, namely of keeping or having in possession for supply, the finding of bags which are said on the prosecution case disclosing the presence of .46 gram of cocaine and also what has been described as white powder, plastic resealable bags and the finding of two amounts of money.*

*In my view the offence of knowingly allow premises to be used as drug premises is one that for the prosecution to establish that the premises were in fact used and even in the limited sense that I've been asked to apply the definition of supply from the Drug Misuse and Trafficking Act, I am of the view that the evidence does not disclose that. The evidence in my view is equally consistent with various matters namely bags and what could be regarded as a small amount of cocaine being on the premises. In my view there is no evidence to indicate that the premises within section 13 of Police Powers Drug Premises Act 2001, were knowingly being allowed to be used as drug premises.<sup>371</sup>*

The charges of allow premises to be used as drug premises were dismissed against the two defendants.

<sup>365</sup> Ibid, p. 46

<sup>366</sup> COPS event narrative 2, Inner Metropolitan Region, Drug Premises Incident 4.

<sup>367</sup> In the court proceedings, one of the defendants had been charged in relation to 0.46 grams of cocaine.

<sup>368</sup> COPS event narrative, Inner Metropolitan Region, Drug Premises Incident 4.

<sup>369</sup> Downing Centre Local Court, *Police v Valerie June Murphy and Michael Andrew Murphy*, 21 May 2003, p. 13.

<sup>370</sup> *Police Powers (Drug Premises) Act*, s 11(2)(d) and (g).

<sup>371</sup> Downing Centre Local Court, *Police v Valerie June Murphy and Michael Andrew Murphy*, 21 May 2003. p. 14.

## Case study 6.

### Drugs, money, fortifications and calculators

In the event narrative in relation to this incident, police stated that the premises was well known for the distribution of prohibited drugs in the area.<sup>372</sup> Surveillance had been conducted, in the course of which police stopped the vehicle of a person who had just been at the premises who was found in possession of drugs. Police successfully applied for a search warrant.<sup>373</sup>

When police searched the house, they found 201 grams of cannabis and 61 ecstasy tablets in a canister in a foundation pillar under the house. Some amphetamine was also retrieved from the toilet.<sup>374</sup> Police also located a quantity of resealable plastic bags, scales, a calculator and a measuring spoon. They noted that there was a camera outside the house, that the front door was "heavily reinforced with metal plating",<sup>375</sup> and that they had heard the toilet flush when they were attempting to gain entry. Two wallets that did not belong to the occupants of the house were also located, and \$1,885 was found on one of the defendants.<sup>376</sup> Six people found on the premises were charged, five with allow premises to be used as drug premises, and one with being found on drug premises.<sup>377</sup>

During the court proceedings, the magistrate made a range of comments about the legislation, particularly in relation to the use of specific indicia, such as firearms and syringes, and the use of any or all of the indicia, to define premises as drug premises. Using the example of indicia of firearms, (hypothetical in this case),<sup>378</sup> the magistrate stated that:

*In order to be satisfied that it is a drug premises I may have regard to any or all, any or all it seems to imply to me, one or more and having it listed like that the legislature appears to me to be saying that evidence... [not transcribable]... firearm is evidence of supply of a prohibited drug or manufacture of a prohibited drug. I cannot read the Act in any other way but I am finding it very difficult to accept that this is the intention and certainly the ordinary usage of inference would not allow a Court to infer the presence of illegal firearms indicated a drug premises. It might indicate something illegal, they certainly would indicate something illegal. They might indicate all sorts of things, intention to rob a bank, intention to shoot rabbits. There certainly is no compelling, in my view, conclusion that I would draw that was indicative of a drug house and yet it appears from the section that the section allows me to rely on just one of those factors.*<sup>379</sup>

Similarly, the magistrate also commented about section 11(d) (also hypothetical in this case) that relates to evidence of a syringe, or any other means or device used in the supply, manufacture or use of a prohibited drug on premises, stating that such evidence:

*... certainly points to some involvement with a drug but whether or not supply and manufacture of a drug, but simply use, and how use can point to supply or manufacture beyond reasonable doubt is a, I find it a real difficulty ...*<sup>380</sup>

Another issue that emerged in this case related to the fact that police had found some cannabis on the premises. The prosecution argued that this also indicated that the premises were drug premises. Drug supply or cultivation in relation to cannabis cannot be the basis of the use of the Drug Premises Act.<sup>381</sup> However, the prosecution in this case had submitted that the finding of a bag of cannabis in the lounge room indicated that the premises was used for the supply of drugs, and had argued that where there is cannabis, there are frequently other drugs. The magistrate disagreed, saying that it "seems to fly in the face of the definition section which excludes cannabis from prohibited drugs".<sup>382</sup>

The magistrate also found that there was no evidence connecting the defendant (who had also been charged with possession) with the amphetamines, and was not satisfied that the police had found the ecstasy in the place where they said that they had.<sup>383</sup> Allegations had also been made earlier in the proceedings by the defence that police had planted the 61 tablets of ecstasy that were found.<sup>384</sup> The magistrate said this had not been proved, but that it "remains a possibility that the police brought the drugs onto the premises themselves".<sup>385</sup>

<sup>372</sup> COPS event narrative, Inner Metropolitan Region, Drug Premises Incident 14.

<sup>373</sup> The type of search warrant is not noted.

<sup>374</sup> COPS event narrative, Inner Metropolitan Region, Drug Premises Incident 14.

<sup>375</sup> Ibid.

<sup>376</sup> Ibid.

<sup>377</sup> Ibid.

<sup>378</sup> Firearms were not found on this premises.

<sup>379</sup> Downing Centre Local Court, *Police v Ian William Rodger, Michael Richard Thomas Anthony, Phillip Wilfred Francis, David John Connors, Michael James Malone, and John James Dempster*, 10 February 2003, pp.62- 63.

<sup>380</sup> Ibid, p. 63

<sup>381</sup> *Police Powers (Drug Premises) Act*, s. 3. The definition of "prohibited drug" that applies to this Act excludes cannabis leaf, oil and resin.

<sup>382</sup> Downing Centre Local Court, *Police v Ian William Rodger, Michael Richard Thomas Anthony, Phillip Wilfred Francis, David John Connors, Michael James Malone, and John James Dempster*, 10 February 2003, p. 66. One of the defendants was charged with possession in relation to quantity of cannabis, and was found guilty and fined \$100 for this offence.

<sup>383</sup> Ibid, p. 71.

<sup>384</sup> Ibid, p. 29. One of the defence lawyers asked a police witness if they had put the canister containing 61 ecstasy tablets under the house earlier that day, and the officer said that they did not.

<sup>385</sup> Ibid, p. 29.

In relation to the money located on one of the occupants, the magistrate accepted the explanation that was given by the defendant that it had been lawfully obtained.<sup>386</sup> Police had also alleged that the calculator that was found in the house was used to calculate drug sales, but the magistrate did not agree:

*I am not sure that I could find anything sinister about that and a calculator certainly might be used to add up or subtract various things, including drug sales, but the fact that there was no record of drug sales found in what was quite a lengthy search of the house and indeed a strip search of each of the people there, it would seem to me to indicate that one purpose of the myriad of purposes that calculators can be used should not be accepted.*<sup>387</sup>

The defence also alleged that the scales that were found on a table in the house were used to weigh darts, and while the magistrate found that this was a fairly incongruous explanation, it was accepted.<sup>388</sup>

The drug premises charges were dismissed against all of the defendants, and costs were awarded against the police.

## 5.7. Types of drug premises

In this section, we discuss the various types of drug premises against which police took action under the Act. These types of premises include fortified, non-domestic drug premises, clandestine laboratories, cars, and a motel room. We have discussed the use of the Act in relation to clandestine laboratories in the “Definition of drug premises” chapter.

### 5.7.1. Non-domestic drug premises

While the indicia that may be used to define drug premises in the Act do not stipulate that drug premises need have any particular characteristic, the Attorney General’s second reading speech indicates that the legislation was intended to give police new powers to deal with a particular type of drug premises - namely the non-domestic drug premises of the type that had emerged in Cabramatta. Police reported that many of these premises were also fortified. The Attorney General commented in his second reading speech:

*It is a characteristic of drug premises that they are not used for lawful or domestic purposes, so it is reasonable to expect persons to show why they are there once it is proven that they are premises used for the manufacture and supply of prohibited drugs.*<sup>389</sup>

It was the emergence of this type of drug premises that had reportedly been associated with particular difficulties for police, like the destruction of evidence of prohibited drugs, before police were able to gain entry.

The Drug Premises Act was most commonly used on domestic premises (such as premises used as a residence) that police believed were also being used for drug manufacture or supply. This is contrary to the understanding that it is characteristic of drug premises that they are not used for domestic purposes. Our research suggests that over the review period only a small percentage of the 141 drug premises, about 9%, were non-domestic.

There were eight non-domestic drug premises in Cabramatta. The use of the Act on these premises is discussed in the chapter, “The Drug Premises Act in Cabramatta”. There were four non-domestic drug premises in other LACs. Each of these four uses of the Act are discussed below. The State Crime Command also used the legislation in respect of one non-domestic drug premises.

### 5.7.2. Non-domestic drug premises in LACs in NSW

According to police documents, police took action in relation to one non-domestic drug premises in a LAC in the Greater Metropolitan Region, two in the Inner Metropolitan Region, and one in the Southern Region over the two year review period. Each of these non-domestic identified drug premises is described below. The State Crime Command also used the Act in respect to one premises that was described as “sparsely furnished”.<sup>390</sup>

<sup>386</sup> Ibid, p. 67.

<sup>387</sup> Ibid, p. 67.

<sup>388</sup> Ibid, p. 68.

<sup>389</sup> The Hon. R. Debus, second reading speech, NSWPD, May 30 2001, p. 13997.

<sup>390</sup> State Crime Command, Drug Premises Incident 17.

### 5.7.3. Non-domestic drug premises – Greater Metropolitan Region

Of the 42 drug premises in the Greater Metropolitan Region (excluding Cabramatta), one appeared to be non-domestic. This premises was described in an event narrative in the following way:

*The premises itself is a two bedroom granny- flat at the rear of the main premises. Inside police observed that the flat had no furniture, no cooking utensils, no fridge or washing machine, no food in any of the rooms. One double bed size mattress was seen to be on the floor of the main bedroom...*

*Situated on the floor in front of the mattress in the main bedroom was a small pane of glass placed horizontally over a small plastic stool. Strategically positioned on the pane of glass were small piles of off-white powder, believed to be heroin. Beside the stool were numerous assorted coloured water balloons, In the same area there was also a number of water balloons rolled in small balls...*

*In the front bedroom where the mattress and the pane of glass were located. There was also a small electric heater, a television, a video player, and a number of videos on a small stand. Apart from these there was no other furniture inside this room.<sup>391</sup>*

Police did not note the presence of any security measures in this instance. Police seized 120 grams of heroin, 28 grams of cannabis and a total of \$1590 from the four people found on the premises. Two of the men were charged with being found on drug premises and with several supply offences, and two were charged with supply offences and with goods in custody.<sup>392</sup>

### 5.7.4. Non-domestic fortified drug premises - Inner Metropolitan Region

There were two non-domestic drug premises in this region. These premises also had various security measures that were noted by police. One premises, a unit, had a security grill covered in gauze on the front door, with a small hole cut into the mesh near the door handle, and police had received information that drugs are passed through the hole in the gauze.<sup>393</sup> There was also a solid wooden door behind the security grill.<sup>394</sup> While the unit had some furnishings, including a two-seater lounge, television and a play station, according to police, it did not "appear to be lived in on a regular basis".<sup>395</sup> A police scanner was also found sitting on a coffee table in the lounge room. Police reported that, in the kitchen, there was some canned foods and cereal that looked like they had been there for a while, no fresh food in the cupboards or the refrigerator, and a bong on a shelf in one of the kitchen cupboards.<sup>396</sup>

A second drug premises in the Inner Metropolitan Region was also identified as non-domestic and secured. The house was described in the event narrative as follows:

*Police observations of the premises were that metal grill doors were on the front and rear. The house itself had little or no furnishings at all. There was little or no food. [Defendant's name] is unemployed and has been so for some period of time. Two of the persons present at the time the warrant was executed admitted attending the premises solely to possess/use prohibited drugs. The drugs, scales, plastic resealable bags and [defendant's name] admission to supplying drugs all lead Police to allege that the premises were being utilised as a drug house.<sup>397</sup>*

### 5.7.5. Non-domestic drug premises - Southern Region

Only one drug premises in the Southern Region appeared to be non-domestic.

Police arrived at this premises and found six people, four of whom fled, but were chased and apprehended. When police searched the premises, officers found syringes and swabs, \$625, and 3.58 grams of amphetamines on one person. Quantities of money ranging between \$230 and about \$340 were found on other people who had been in the house.<sup>398</sup> No security measures or surveillance devices were noted in relation to the premises. In the event narrative, police concluded:

*The Drug premises Warrant was executed where evidence was found to support the declaration of the premises to be a "drug house". The premises was devoid of all furniture, there was evidence of drug use, with numerous syringes and swabs apparent. One of the persons also arrested on the premises was found in possession of prohibited drugs and cash.<sup>399</sup>*

<sup>391</sup> COPS event narrative 1, Greater Metropolitan Region, Drug Premises Incident 23.

<sup>392</sup> Ibid.

<sup>393</sup> COPS event narrative 2, Inner Metropolitan Region, Drug Premises Incident 6.

<sup>394</sup> Ibid.

<sup>395</sup> Police statement, Inner Metropolitan Region, Drug Premises Incident 6.

<sup>396</sup> Ibid.

<sup>397</sup> COPS event narrative, Inner Metropolitan Region, Drug Premises Incident 16.

<sup>398</sup> COPS event narratives, Southern Region, Drug Premises Incident 7. Police found \$323.30 on the other person on the premises.

<sup>399</sup> COPS event narrative 1, Southern Region, Drug Premises Incident 7.

### 5.7.6. Cars as drug premises

As we have noted above, the definition of drug premises provided in the legislation can also include a vehicle.<sup>400</sup>

Over the review period, there were four instances in which cars constituted identified drug premises - three in Cabramatta, and one relating to a use of the Act by the State Crime Command. An incident in which the Drug Premises Act was used in relation to a car is documented in Chapter 6, "The Drug Premises Act - new offences".

### 5.7.7. Motel room as drug premises

On one occasion, the Drug Premises Act was used in relation to a motel room. However, while drug premises charges were laid a Part 2 search warrant (rather than a drug premises warrant) was obtained to conduct the search. Police advised us it was not until the warrant was executed that it was "clearly evident that the premises were being used, or established for, the sale of illicit drugs".<sup>401</sup>

When police entered the room, they found Mr A, who was alleged to have been involved in drug supply, Ms B, their four children, and another man, Mr C. Police then secured the premises, gave the occupier's notice to Mr A, and commenced the search. One of the searching officers recalled immediately noticing a pile of used and unused syringes on the bedside table, next to the bed where Mr A had been sleeping when police entered the unit.<sup>402</sup>

Police asked Mr A if he had any drugs in the unit, and he pointed to a black pouch on the bedside table. The pouch contained 42 sealed plastic bags, some held heroin, others amphetamine. There were also spoons, swabs, sterilised water, gelatine caps, and hundreds of syringes found in the motel room. Scales, a mortar and pestle with white powder in it and small pieces of coloured plastic similar to the packaging used for the other drugs located were also found on the premises, as well as a note pad with the names of known drug users and dollar amounts of \$50 and \$100 recorded beside each name. Two bags containing a large quantity of white tablets inside were also located.

It was established that some of these items belonged to Mr C, including several fit packs and two satchels of amphetamine or washy<sup>403</sup> that were found in the pocket of a pair of shorts. Mr C also told police he had injected amphetamines while he had been staying in the unit. When he was later interviewed by police, the following allegation was put to him:

*Police: Do you realise that to us, as outsiders, it looks as though both these premises were set up as a drug supply location?*

*[Mr C]: No s..t.*

*Police: You know what I'm saying, you walk in there, you find a lot of drugs, you find a lot of needles and all that.*

*[Mr C]: I was only staying there helping him out...[with the children].<sup>404</sup>*

There were also a number of mobile phones in a bag in the cupboard, and eight cards with Mr A and Mr CAS name and several phone numbers written on them. Police alleged that these were similar to business cards to be given to prospective customers.<sup>405</sup>

Police also told Mr A that they believed the drugs were for the purposes of supply, and appeared to be packaged for that purpose. In response, according to a police statement, he told police that he had a "bad drug habit".<sup>406</sup> Police then put it to him that the amount of drugs and paraphernalia located would "suggest that it was not for his personal use and suggested that if he used drugs on such a basis he should have significant injection marks."<sup>407</sup> According to police, he could not show them any track marks.

In the event narrative, police summarised their conclusions about the activities at the holiday apartment:

*Police believe that due to prior intelligence, observations and the sheer amount of prohibited drug, drug paraphernalia, and associated articles that the defendant [Mr A] and [Mr C] were conducting a drug house. It is believed that due to the large amount of used syringes and paraphernalia in the premises that persons would enter the premises, purchase and use drugs within and then leave.<sup>408</sup>*

<sup>400</sup> Police Powers (Drug Premises) Act, s. 3(1).

<sup>401</sup> Interview, police officer, Northern Region, 14 November 2003.

<sup>402</sup> Police statement, Northern Region, Drug Premises Incident 5.

<sup>403</sup> There were only small granules of amphetamines inside the satchels.

<sup>404</sup> Police ERISP interview, Northern Region, Drug Premises Incident 5, p.34-35.

<sup>405</sup> COPS event narrative, Northern Region, Drug Premises Incident 5.

<sup>406</sup> Police statement 1, Northern Region, Drug Premises Incident 5.

<sup>407</sup> Ibid.

<sup>408</sup> COPS event narrative, Northern Region, Drug Premises Incident 5.

Mr A was charged with organising a drug premises, this charge was filed in court.<sup>409</sup> He received a 5 year sentence for two supply offences.<sup>410</sup> Ms B was not charged. Police have advised us that they did not believe they had sufficient evidence against her.<sup>411</sup>

Mr C was also charged with being on, entering, or leaving drug premises, pleaded guilty and was sentenced to three months imprisonment.<sup>412</sup> In the court transcript, there was no discussion of the facts of the case because of this guilty plea. Mr C was charged with organising a drug premises, but this charge was filed in court. He was also charged with self administering drugs, for which he was fined \$75, and with possession, relating to the amphetamines, for which he was sentenced to a rising of the court.<sup>413</sup>

### 5.7.8. User/dealers and the operation of drug premises

In parliamentary debate, and in submissions to our discussion paper, concerns were expressed that the Drug Premises Act may not target high level drug suppliers, but may instead target user/dealers who are involved in drug premises as a consequence of their own drug use.

It was evident from our examination of 80 court transcripts relating to the use of the Act in Cabramatta, that 25 of those who had been charged with an offence had a history of drug use and/or a history of drug addiction. However, it is important to note that a defendant's history of drug use/addiction will not always emerge at court.

It was also evident from our examination of event narratives that there were instances in which people who were involved in drug premises were dealing drugs to support their own addiction. Several of these are documented below.

Police had obtained a drug premises search warrant for a house in a LAC in the Northern Region "as a result of police surveillance and numerous intelligence reports".<sup>414</sup> They arrested the occupier of the house, a forty-two year old male, as he walked in through the back gate of his house. When they searched him, officers found 5.6 grams of heroin, and according to the event narrative, he "stated that he...intended to sell half and self administer the other". He told police that he had been obtaining this quantity of heroin two or three times a week for the past two months to "finance his own habit".<sup>415</sup>

Inside the house, police also found numerous unused and used syringes, two sharps containers, 5 vials of methadone and 3 grams of cannabis and some stolen property that the defendant told police he had received as payment for supplying heroin. The man later admitted that he allowed his premises to be used by between six and ten people a day to administer heroin.<sup>416</sup>

On another occasion, police executed a search warrant on premises in the Southern Region in late 2001. The basis upon which the search warrant had been applied for is not noted in the event narrative. When police entered the premises they found two men in the bathroom, one of whom had a tourniquet around his arm, and was about to self administer amphetamines. Both men were visiting the premises, and admitted to police that they were intending to inject the drug.

When they searched the unit, police found numerous uncapped syringes, and a small resealable bag containing possible trace amphetamine. They also found a baking dish with a brown residue baked onto it, which police believed had been an attempt to manufacture amphetamine. They also found an esky with liquid that they believed was the first stage in the manufacture of amphetamine, but the occupier of the premises reportedly told police that it was merely waste from storing food in the esky over a long period. In the event narrative, police conclude the following about the premises:

*As regards to the use of the premises as a drug house, police believe the premises to be used on a regular basis for illicit drug use. The amount of syringes, empty resealable plastic bags, drug paraphernalia and the fact people were found about to administer amphetamine to themselves it was evident the unit was being used to house drug users.*<sup>417</sup>

The occupier of the premises was charged with allowing his premises to be used as drug premises. The two drug users found on the premises were not charged. The occupant pled guilty, and was given a 12 month good behaviour bond. The magistrate took the fact that the occupier had sought some assistance for his drug problem into account, but made the following remarks about his involvement in the drug premises:

<sup>409</sup> A charge may be filed in court or kept on record when a person is convicted of other offences that attract higher penalties. In this case Mr A was charged with several supply offences and the drug premises charge was filed in court.

<sup>410</sup> For two counts of supplying between the small and indictable quantities of heroin and amphetamine.

<sup>411</sup> Interview, police officer, Northern Region, 14 November 2003.

<sup>412</sup> He was also charged with organising drug premises, but this charge was filed in court.

<sup>413</sup> "Rising of the court" is a nominal penalty meted out where a person is convicted of the offence, but no custodial sentence, fine etc is imposed.

<sup>414</sup> COPS event narrative, Northern Region, Incident 6, 10 January 2002.

<sup>415</sup> Ibid.

<sup>416</sup> Ibid.

<sup>417</sup> COPS event narrative, Southern Region, Incident 2, 19 October 2001.

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*... rather than being on the edge of all of this it seems to me that you were pretty squarely in the middle. It was your house, there were other persons there who were using drugs, there were drugs found which you have admitted belonged to you, and it is on the basis of that and the equipment that was found which brings you here before the Court today. That indicates, as I said, not just a passing interest in amphetamines particularly, but something that appears to be the subject of some organisation.*<sup>418</sup>

In another incident in the Southern Region, according to the event narrative, police had received "information that the occupants... [of a unit] were in possession of prohibited drugs". Police applied for and were granted a warrant.<sup>419</sup> Two women and a nine month old baby were on the premises when police arrived. In their search, police found syringes, swabs and tourniquets, 2.8 grams of amphetamine, 2.4 grams of cannabis and 2 bong. One woman was charged with allowing the premises to be used as drug premises, and the other was charged with possession. At the conclusion of the event narrative, police note:

*From locating the amphetamine and cannabis within the unit and the fact there were syringes, swabs and tourniquets, police are of the opinion that the premises rented by the defendant... is commonly used in the administration of prohibited drugs.*<sup>420</sup>

### 5.7.9. Evidence of drug use on the premises, and supply

There were also several instances when police executed the search warrant and found inside the premises, people who were in the process of injecting drugs. For example, in one instance it is recorded that, early one afternoon in July 2001, police arrived at a house in the Northern Region to execute a search warrant. They document what happened in the event narrative as follows:

*Immediately upon entry to the house police saw a male in the downstairs bedroom sitting on a bed with a tourniquet around his right arm and a syringe in his left hand. Upon seeing police the male squirted the contents of the syringe onto the floor. This male was seen to have a puncture mark on his right hand with a small amount of blood coming from the wound, this wound was consistent with a needle puncture mark, it was obvious to police that this male had or was about to inject himself with an illegal substance. The male was spoken to and admitted he was about to inject himself with an illegal substance.*<sup>421</sup>

In this instance, police also found a silver foil with white powder in it, a number of used syringes and \$15,000. They had also conducted several successful undercover buys of heroin from the premises two months prior. After listing what was seized from the premises, and describing what happened when they executed the search warrant, police concluded:

*The above information together with the evidence conducting during the police operation in May indicate the defendant is the owner and occupier of premises which is now described under legislation as being premises used as a drug house.*<sup>422</sup>

Therefore, in this instance, it appears that police had evidence that the premises was being used for both drug use, and supply.

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<sup>418</sup> *Police v Martin Allan Dawson*, 14 November 2001, p. 2.

<sup>419</sup> The type of search warrant is not noted.

<sup>420</sup> COPS event narrative, Southern Region, Incident 3, 12 March 2002.

<sup>421</sup> COPS event narrative, Northern Region Incident 2, 27 July 2001.

<sup>422</sup> *Ibid.*





# Chapter 6. The Drug Premises Act - new offences

## 6.1. Overview

In this chapter, we discuss the new offences created by the Drug Premises Act, using case studies from court proceedings to illustrate aspects of how these offences have been considered in court.

We will also discuss concerns that were raised about the reversal of the onus of proof in relation to two of the offences in the Act: one of being found on, entering or leaving drug premises, and the other of organising or assisting drug premises.

Demographic information about people who were charged with offences in the Act, and where available, information on pleas entered into, and court outcomes for defendants, is also provided.

## 6.2. Offences created by the Drug Premises Act

The Drug Premises Act creates three key offences<sup>423</sup> relating to drug premises. These offences are:

- being on, entering or leaving drug premises<sup>424</sup>
- organising, conducting, or assisting in organising or conducting, drug premises and<sup>425</sup>
- allowing use of premises as drug premises.<sup>426</sup>

A person cannot be convicted of any of the above offences unless it is first proven in court that the premises in question are drug premises.<sup>427</sup> In addition, a person cannot be found guilty of being found on, entering or leaving drug premises if they satisfy the court that they had a lawful purpose, or a lawful excuse, for being there.<sup>428</sup> Similarly, if a person is charged with organising, conducting, or assisting in organising or conducting drug premises, they cannot be found guilty if they satisfy the court that they did not know, or could not reasonably be expected to have known, that the premises were drug premises.<sup>429</sup>

The maximum penalty for each of these offences is 12 months imprisonment, or a fine of \$5,000, or both. For a second or subsequent offence under each of these provisions, the maximum penalty increases to five years imprisonment, a fine of \$55,000, or both.<sup>430</sup>

The figure below shows the numbers of charges laid in NSW for each of these offences over the review period. The number of drug premises charges laid in each LAC in NSW is presented in the Appendix of this report.

Most of the charges that were laid under the Drug Premises Act during the review period were for the offence of being found on, entering or leaving drug premises. A total of 220 charges were laid for this offence.

A total of 108 charges were laid for the offence of allowing a premises to be used as a drug premises.

A total of 66 charges were laid for the offence of organising or assisting drug premises.

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<sup>423</sup> Several other offences in the Act relate to the obstruction of police during the execution of the search warrant, and for failing to state full name and address to police. A person may be convicted of these offences even if premises are *not* proven to be drug premises. *Police Powers (Drug Premises) Act*, s. 9.

<sup>424</sup> *Police Powers (Drug Premises) Act*, s. 12.

<sup>425</sup> *Police Powers (Drug Premises) Act*, s. 14.

<sup>426</sup> *Police Powers (Drug Premises) Act*, s. 13.

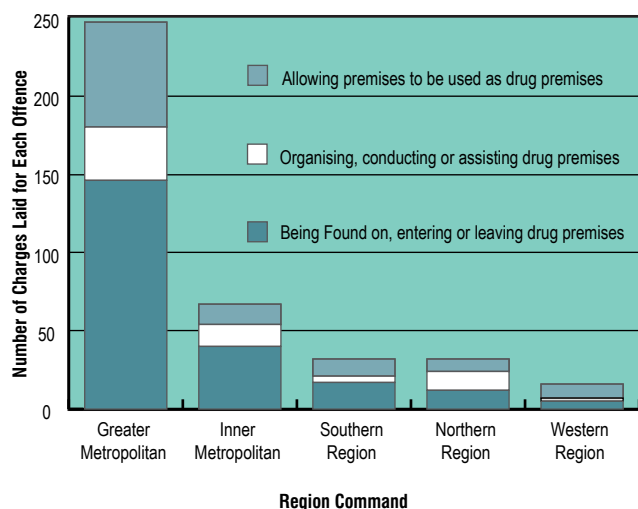
<sup>427</sup> *Police Powers (Drug Premises) Act*, s. 11(1).

<sup>428</sup> *Police Powers (Drug Premises) Act*, s. 12(2).

<sup>429</sup> *Police Powers (Drug Premises) Act*, s. 14(3).

<sup>430</sup> *Police Powers (Drug Premises) Act*, s. 12, 13 and 14

**Figure 10: Number of charges laid for offences in the Drug Premises Act 1 July 2001 – 30 June 2003**



Source: NSW Police data extracted from the COPS database.

	Being Found on, entering or leaving drug premises	Organising, conducting or assisting drug premises	Allowing premises to be used as drug premises
Greater Metropolitan Region	146	34	67
Inner Metropolitan Region	40	14	13
Southern Region	17	4	11
Northern Region	12	12	8
Western Region	5	2	9

## 6.3. The offences in the Drug Premises Act: discussion

### 6.3.1. Police views on the major offences created by the Drug Premises Act

Police we spoke to from a range of LACs commented favourably that the introduction of the Drug Premises Act had enabled them to lay charges in circumstances in which police may not otherwise have been able to take action.

Over the two-year review period, 166 people were charged with a drug premises offence, who were not charged with any other drug offence.<sup>431</sup> This lends support to the police assertion that the Drug Premises Act has allowed police to charge persons believed to be involved in drug related activity who could not otherwise be charged under existing legislation.

One officer from a western Sydney LAC commented to us that a key strength of the legislation was that in instances in which police believed everyone on the premises was involved in drug activity, they were now able to charge them all. He said:

*The fact that it gives you the option of charging all the people on the premises, that's the big thing. That's where it's most effective.*<sup>432</sup>

This LAC had used the legislation on premises at which a high volume of dealing had taken place.<sup>433</sup> Police ran an operation that lasted about six weeks in the lead up to the execution of the search warrant. They estimated that up to ten to fifteen deals an hour were conducted at the house. Police were of the view that everyone who lived there would know what's going on. The officer we spoke to said:

*The whole family were involved and we were able to charge everyone... Under normal legislation, you don't get to take out everybody, and then they can just put someone else in their place.*<sup>434</sup>

### 6.3.2. Reversal of the onus of proof

Probably the most controversial aspect of the Drug Premises Act has been the creation of two new offences that reverse the onus of proof. These are:

<sup>431</sup> COPS database. This includes supply, possession, manufacture and cultivation offences under the *Drug Misuse and Trafficking Act 1985* and the *Poisons and Therapeutic Goods Act 1966*.

<sup>432</sup> Personal communication, Crime Coordinator, a western Sydney LAC, August 2003.

<sup>433</sup> Ibid.

<sup>434</sup> Ibid.

- the offence of being found on, entering, or leaving drug premises<sup>435</sup> and
- the offence of organising drug premises.<sup>436</sup>

The onus of proof relates to who is required to prove an offence. In most instances in the criminal law, the onus of proof is on the prosecution, and guilt must be proven beyond reasonable doubt. That the defence is not required to prove innocence reflects what is usually regarded as a fundamental principle of the criminal law - that a person is innocent until proven guilty. If the onus of proof is reversed, the accused is required to prove their innocence. The standard to which this must be proved, however, is on the balance of probabilities, rather than the higher threshold of beyond reasonable doubt.

Concerns were expressed about the reversal of the onus of proof in submissions to our discussion paper and in the course of parliamentary debate about the Drug Premises Act. In a submission to our discussion paper, the Legal Aid Commission of NSW expressed opposition to the reversal of the onus of proof in any legislative context, and had particular concerns about how it may impact upon vulnerable groups in the community charged under the Drug Premises Act:

*The reversal also means significant difficulties for those who are uneducated, inarticulate, have intellectual or physical disabilities, or indeed may have drug addiction problems. The Commission regularly experiences difficulties with those people where they may be charged with an offence such as goods in custody, which has similar provisions. In many cases, it is simply impossible for the clients to be able to give an adequate account of themselves due to their disabilities.*<sup>437</sup>

In the Commission's view, the potential for injustice in this sort of situation is significant and "the social benefit is far outweighed by the potential detriment that may be suffered in such situations".<sup>438</sup> One health education officer from Cabramatta observed that the people who had been charged under the Drug Premises Act, in the experience of the officer, were "often illiterate or not articulate".<sup>439</sup>

Another submission to our discussion paper, received from Family Drug Support,<sup>440</sup> expressed a general concern about reversing the onus of proof, stating that it is in "direct contradiction of the normal operation of justice in Australia and causes great concern for personal rights and civil liberties".<sup>441</sup> The North and North West Legal Service also expressed a general concern that the reversal of the onus of proof may leave the community open to a "misuse of these powers".<sup>442</sup> The Legal Service submission stated that the reversed burden of proof may "result in the accused being forced to give evidence that may be self incriminating".<sup>443</sup>

Particular concerns have also been expressed in submissions to our discussion paper and in other forums that the reversal of the onus of proof means that the credibility of the accused "is on trial".<sup>444</sup> In a submission to Parliament prepared by the Law Society when the Act was being debated, concern was expressed that the court's assessment of the accused knowledge or intent in regard to why they said they were on drug premises would be based solely on an assessment of the person's credibility. The Law Society argued that:

*The ability of one person to assess another's credibility is hardly a precise science. For example, nervous witnesses can easily create an impression that they have something to hide.*<sup>445</sup>

The North and North West Legal Service expressed a similar concern in their submission to our discussion paper, stating that where "knowledge of a crime is at issue the accused credibility will also be on trial".<sup>446</sup> The Legal Service also believed that an alien and threatening court environment could impact on making a subjective determination about the credibility of defendants.<sup>447</sup>

<sup>435</sup> *Police Powers (Drug Premises) Act*, s. 12.

<sup>436</sup> *Police Powers (Drug Premises) Act*, s. 14.

<sup>437</sup> Submission, NSW Legal Aid Commission, 30 July 2003.

<sup>438</sup> *Ibid.*

<sup>439</sup> Submission, Health Education Officer, Cabramatta, July 30 2003.

<sup>440</sup> Family Drug Support "assists families to deal with drug issues in a way that strengthens relationships and achieves positive outcomes". Mission Statement, *Insight Family Drug Support Information Booklet*, p. 1.

<sup>441</sup> Submission, Family Drug Support, 31 July 2003.

<sup>442</sup> Submission, North and North West Community Legal Service, 1 August 2003.

<sup>443</sup> *Ibid.*

<sup>444</sup> *Ibid.*

<sup>445</sup> Law Society Submission, quoted by the Hon. I. Cohen, NSWPD, 7 June 2001, p. 14636.

<sup>446</sup> Submission, North and North West Community Legal Centre, 1 August 2003.

<sup>447</sup> *Ibid.*

### 6.3.3. Police views on the reversal of the onus of proof

The NSW Police submission to our discussion paper stated that the reverse onus occurs frequently in other Acts. Their submission acknowledged that magistrates will be asked to perform a new and difficult task in relation to this Act, but that the courts, police and defence lawyers should be accustomed to dealing with cases where a reverse onus applies.<sup>448</sup>

NSW Police have expressed the view that the reverse onus is a vital part of the legislation assisting police to have a direct impact “on [the] occupancy of drug premises”.<sup>449</sup> The submission notes:

*LACs stated this provision directly addresses the evidentiary difficulties frequently encountered by police when using existing legislation. Specifically, the legislation allows police to proceed to prosecute even if prohibited drugs are not located on the premises. Marrickville LAC have reported that this part of the legislation has given police the “upper hand” by placing the onus on the dealer to prove otherwise.*<sup>450</sup>

The evidentiary difficulties referred to above include the problem of proving offences such as possession or supply, when police find prohibited drugs on premises that are occupied by more than one person.

In *Filippetti*<sup>451</sup> (1978) the NSW Court of Criminal Appeal considered an appeal against a supply conviction involving a large quantity of buddha sticks<sup>452</sup> found in the lounge room of a shared house. In order to justify the factual basis upon which the supply offence could proceed, it was necessary to establish that the drug was in the exclusive control of the accused.<sup>453</sup> In this case, it was not possible to do so. In his deliberations, the Chief Justice stated:

*The difficulty confronting the Crown in this case comes from the large number of persons occupying this comparatively small house and all using the lounge room where the buddha sticks were found...*

*The finding of the buddha sticks in the chair in this lounge room where all six occupants of the house apparently had equally free access... would not readily establish that there was exclusive physical control of the buddha sticks in any one of the occupants unless there were some other evidence to accompany the finding of the buddha sticks.*<sup>454</sup>

The court found that there was not enough evidence to rule out the possibility that the buddha sticks were in the possession of another occupant, or for a jury to conclude, beyond reasonable doubt, that the buddha sticks were in the exclusive control of the appellant.<sup>455</sup>

Police we spoke to in Cabramatta were of the view that if they charged someone with being found on, entering or leaving drug premises, the case is “virtually unloseable”.<sup>456</sup> In the NSW Police submission to our discussion paper, it was reported that for those offences in the Act for which the reverse onus applies “most of those charged, plead guilty and those attempting to defend the charge have failed”.<sup>457</sup>

In a focus group held with Cabramatta Police, one officer told us how the Drug Premises Act had enabled police to overcome evidentiary difficulties such as those considered in the *Filippetti* case:

*Pre the drug house warrant, if you execute a warrant here now, and you've got an ounce of heroin sitting in the middle of the room, and we would have had eight people here, but you wouldn't have been able to prove possession for any of those eight people, unless they made admissions. Whereas now, with the Drug House legislation, we can charge each eight people with being on a drug premises.*<sup>458</sup>

Police have also said that the reverse onus was useful because they could also charge people on drug premises who were not directly involved in drug supply. One senior officer said that they believed that the ability to charge a person with a drug premises offence may act as a deterrent against that person becoming involved in drug supply in the future:

<sup>448</sup> Submission, NSW Police, received 12 August 2003.

<sup>449</sup> Ibid.

<sup>450</sup> Ibid.

<sup>451</sup> *Filippetti* (1978) 13 A Crim R 335.

<sup>452</sup> A “buddha stick” is the colloquial term for a type of cannabis that is particularly potent, and is often claimed to have been grown in Thailand.

<sup>453</sup> Peter Zahra, Robert Arden, Mark Ierace and Beverly Schurr, *Drug Law in NSW*, Second Edition, Federation Press, Sydney, 1998, p. 36.

<sup>454</sup> Quoted in Zahra et al, *Drug Law in NSW*, p. 37.

<sup>455</sup> Zahra et al, *Drug Law in NSW*, p. 37.

<sup>456</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>457</sup> NSW Police, Submission, received 12 August 2003.

<sup>458</sup> Focus Group, Cabramatta Detectives, 2 July 2003.

*With reverse onus, we didn't have to prove what they were there for, they had to prove that. And a lot of it was that deterrent factor, you've been here, you can't just go around, although I didn't supply that cap of heroin, I'm not guilty, the fact that you're involved in it in some minor degree, might just stop them from getting involved in the future ... with a full on supply.<sup>459</sup>*

Also in Cabramatta, while police stated that they did show discretion in relation to who they charged, there were instances in which they charged everyone on fortified drug premises, because they "had to know what was going on".<sup>460</sup> We asked a senior officer in Cabramatta to explain why police tended to charge everyone found on drug premises. The reverse onus provided part of their explanation:

*Probably because of the nature of the place ... probably because of reverse onus, I suppose it comes down to the discretion issue, and if it's clear that someone really was just there, and it's clear that they really were the orange in a bunch of apples, you're not going to charge the orange ... the observations were ... they were sort of like "one in all [in]" and they were all lounging around, or the two would be there, by the mere nature of them being there they had to know what was going on because this premises was so fortified. There was so much activity leading up to the door. There was no one living there. They couldn't be squatting there...<sup>461</sup>*

### 6.3.4. Police discretion: deciding whether to charge a person on drug premises

Police initially determine whether a person has a lawful or reasonable excuse for being found on drug premises. When police execute a search warrant and find people on the premises, they then determine whether to charge the occupants with an offence under the Act, such as being found on, entering or leaving drug premises. Police need to establish in relation to this particular offence if the person has a lawful purpose or a lawful excuse for being found on the premises.<sup>462</sup> Police are advised in the training manual about the Drug Premises Act to consider charging a person with this particular offence in the following circumstances:

*There is no obvious lawful purpose and the person refuses to provide an explanation for their presence.*

*When the person does not have an obvious lawful purpose for being present, in the absence of an explanation by the person, it is proper that police should proceed. The legislation is drafted in such a way as to require these persons to account for their presence in the drug premises.<sup>463</sup>*

Conversely, officers are advised not to proceed against a person for this offence in the following circumstances:

#### ***The person clearly had a lawful purpose or a lawful excuse***

*When a person has an obvious lawful purpose (they live there, work there or are attending an organised function), in the absence of additional material which points to the person being there for an unlawful purpose, it is unlikely that there will be sufficient evidence to warrant proceeding i.e. it can be said that there is no reasonable prospect of conviction.*

...

#### ***The person provides a plausible explanation***

*If the person provides a plausible explanation and there is no available evidence to negate it, it is likely that the circumstance is one where the evidence is insufficient to proceed on the basis that it can be said that there is no reasonable prospect of preventing the person from making out a statutory defence.<sup>464</sup>*

We do not know how often police exercised their discretion not to charge a person under the Drug Premises Act because police are not required to record the exercise of this type of discretion. Police have advised us that they may not make a record of a person having been at premises when they execute a search warrant if they do not charge them.<sup>465</sup>

In our examination of event narratives, we found instances in which police noted that they did not charge a particular person/s on premises. Below are some examples of these police decisions.

A fourteen year-old boy from a north coast town was found on drug premises in an inner-city LAC. He was staying with his grandmother, and the search warrant had been executed at her house while he was there. Police recorded their decision in relation to this young person in the event narrative:

<sup>459</sup> Interview, former crime manager, Cabramatta Police, 21 August 2003.

<sup>460</sup> Ibid.

<sup>461</sup> Ibid.

<sup>462</sup> *Police Powers (Drug Premises) Act*, s. 12.

<sup>463</sup> NSW Police, Mandatory Continuing Police Education Scheme Package, *Police Powers (Drug Premises) Act, 2001*, November, 2001, p. 19.

<sup>464</sup> Ibid.

<sup>465</sup> Interview, former crime manager, Cabramatta, 28 July 2002.

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*After consultation with [the LAC] Prosecutor, Brief Handling Manager and [the LAC] Detectives, it was found that the POI had a lawful excuse for being on the premises, and no formal action should be taken.*<sup>466</sup>

In another case, in a LAC in western Sydney, police noted in the event narrative that the unit had been “identified as a base for the distribution of illegal drugs within the [suburb] area”<sup>467</sup> and that the defendant was the sole occupant. When police arrived at the premises to execute the search warrant, they approached the defendant as he was arriving back at the unit, in company with several other people. In the event narrative, police record that:

*The defendant unlocked the door to the unit and all persons entered the lounge room area. The two males and females were searched and allowed to leave the premises.*<sup>468</sup>

On another occasion, in a LAC in the Northern Region, police had been investigating the activities of two people who they believed were involved in heroin supply in the area. When they executed the search warrant, police found the two suspects, and two other people inside the house. Police noted in the event narrative that they searched all four occupants, and the “other two persons were established as visitors, and after a search of their vehicle they were permitted to leave”.<sup>469</sup>

There were also some instances in which police recorded why they believed a person did not have a lawful excuse for being on the premises. The extract below from a COPS event narrative illustrates this. When police were simultaneously executing several drug premises search warrants in an inner-city LAC, one man ran out to the rear yard of one of the houses:

*The defendant stated he was at the premises to pick up thirty cents to make a phone call. He could not offer an appropriate explanation for being on the premises at the time of the execution of the search warrant. Other persons found on the premises at the time of the execution of the warrant, admitted to police that the premises was [known] for the [self administration] of ... prohibited drugs.*<sup>470</sup>

On another occasion, one man found on drug premises freely admitted to police that he was not there for a lawful purpose. When police entered the house, the occupier and three other people were present. Police found four small bags of heroin on the occupier following a search. When police entered one particular room, they found used and unused syringes, alcohol swabs and cannabis. Police noted in the event narrative that the occupier made admissions to police in relation to the room being used by persons for the administering of prohibited drugs. When they cautioned and searched one of the defendants, police noted that:

*He refused to state why he was at the premises except to say “that they wouldn’t let me in the front door if I wasn’t here to get on. You work it out for yourself.”*<sup>471</sup>

The man was charged with being found on drug premises.

## 6.4. Being found on, entering or leaving drug premises

Section 12 of the Drug Premises Act makes it an offence to be found on, entering or leaving drug premises:

### **12. Offence of entering, or being on, drug premises**

(1) *A person who is found on, or who is found entering or leaving, drug premises is guilty of an offence.*<sup>472</sup>

If a person is found on, entering or leaving drug premises, they have the following statutory defence available to them under section 12(2) of the Act:

*A person is not guilty of an offence under this section if the person satisfies the court that he or she was on, or was entering or leaving, the drug premises for a lawful purpose, or with a lawful excuse.*<sup>473</sup>

Over the two-year review period, 220 charges were laid for the offence of being found on, entering or leaving drug premises across the state. Nine of these charges were for a second offence under this provision.

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<sup>466</sup> COPS event narrative 3, Inner Metropolitan Region, Incident 9.

<sup>467</sup> COPS event narrative, Greater Metropolitan Region, Drug Premises Incident 28.

<sup>468</sup> Ibid.

<sup>469</sup> COPS event narrative, Northern Region, Drug Premises Incident 3.

<sup>470</sup> COPS event narrative, Inner Metropolitan Region, Drug Premises Incident 3.

<sup>471</sup> COPS event narrative, Northern Region, Drug Premises Incident 7.

<sup>472</sup> *Police Powers (Drug Premises) Act*, s. 12(1).

<sup>473</sup> *Police Powers (Drug Premises) Act*, s. 12(2).

In the following section, we will discuss how lawful excuses for being found on, entering or leaving drug premises were considered at court. Cases in which people who were charged with this offence were visiting drug premises are discussed, as are cases in which the person/s charged with this offence lived at the premises.

We also set out available demographic information about people who were charged with this offence. Data was also available from the BOCSAR in relation to some of those charged. This data shows whether they pleaded guilty or not guilty to the charge, and the court outcomes.

### 6.4.1. A lawful excuse for being found on drug premises

No clear patterns emerged in relation to the circumstances in which a lawful excuse was accepted, or not accepted, by the courts. We have set out below a series of case studies to demonstrate the range of circumstances in which people were found on drug premises, and the varying outcomes of these cases at court.

#### Case study 7.

##### Being found on non-domestic drug premises in Cabramatta

Police were granted a Part 2 search warrant to search a house in Cabramatta,<sup>474</sup> and began conducting surveillance that afternoon. During their surveillance, police saw a number of people coming and going, and several vehicles pull up and drive off again.

Police executed the search warrant at about 7.30 that night, proceeding to the rear door of the house. It was opened by one of the occupants, and shut again. Police forced entry, ramming the front and rear doors. As they did so, the rear bedroom window was smashed and four men jumped out, fleeing over the neighbour's fence. The men sustained injuries from the shattered glass. Police arrested one man as he attempted to jump the fence, and another was chased and arrested on a nearby street corner.

Officers gained entry to the house after about 20 seconds, and two men were immediately arrested. A third 25 year old man, found hiding in a cupboard in one of the bedrooms, was arrested soon after. In the event narrative, police described the premises in the following way:

*The premises was barely furnished with only the bare essentials. Only one room within the premises contained a bed. None of the wardrobes within the premises contained clothing. The remainder of the premises were littered with rubbish.*<sup>475</sup>

Ten minutes later, police saw a young man who had fled standing on a garage roof next door, bleeding from a deep laceration to his hand. They enticed him down and he was then arrested. All of the seven were treated by an ambulance. Two stayed behind while police executed the search warrant, and the others were taken to Cabramatta Police Station and charged.

When they searched the house, police found 73.1 grams of heroin packaged in 115 balloons and 52 silver foils in the kitchen and dining room. They also found a number of square pieces of silver foil, tiny water balloons and syringes. In the bedroom and lounge room, police found other property, including televisions, stereos and mobile phones that they believed had been unlawfully obtained.

When interviewed, one of the occupants, a 16 year old male, claimed that he had only been on the premises for several hours before police arrived and had not noticed any suspicious activity. Nor had he noticed the balloons and foil on the lounge room floor. Another defendant, a 17 year old male, denied any knowledge of the drugs and said he had arrived 10 minutes before police executed the search warrant. Police note that this was "contradicted by police surveillance".<sup>476</sup> The police event narrative stated:

*At the time of the warrant there appeared to be no responsible adult within the premises. When asked who owned the premises all of the persons claimed not to know and were only there for the purpose of visiting a friend.*<sup>477</sup>

No charges were laid in relation to the drugs found on the premises. Police have advised us that this was because the occupants had fled, and this presumably created difficulties in proving that particular people had control or possession of the prohibited drugs that were found on the premises.

<sup>474</sup> Search warrant documents were not provided, so the circumstances surrounding the decision to apply for the search warrant are not known.

<sup>475</sup> COPS event narrative, Drug Premises Incident 10, Cabramatta LAC.

<sup>476</sup> Ibid.

<sup>477</sup> Ibid.

All of the occupants were charged with being found on, entering or leaving drug premises. All were Asian: one aged 15, two aged 16, one 17, and the others were in their early to mid-20s.<sup>478</sup> Three of those charged failed to appear at court, and the offences were proved in their absence.<sup>479</sup> Of those who did appear at court, the young person found on the roof, a 16 year old male, said that he didn't know who the premises belonged to, or who had the lease. He said that he knew that there were drugs on the premises, and in the words of his lawyer, he "happened to be there at the time the police raided".<sup>480</sup> He pleaded guilty, was convicted and put on two years probation. The other 16 year old male received a \$100 fine, a 20 year old male received a three months gaol term, and a 25 year old male received a nine month bond.<sup>481</sup>

In sentencing the defendant who received the three month gaol term, the magistrate said that he did not accept that the defendant was not aware of the drug related activity taking place on the premises:

*What I see as relevant in this case is the fact of the police findings and the very clear evidence of significant drug dealing on these premises where Mr Lam was present.*

*He says he was not aware of that. There does appear, on the police facts, to have been some clear and ostensible indications in those premises to anyone being there of the nature of the activity although Mr Lam said that he was not aware of that but a fact I must take into account, Mr Lam has a history, including some involvement in illegal drugs and that is a relevant matter which the Court has regard to as well as with his history of offending...*<sup>482</sup>

## Case study 8.

### Young man found on drug premises in Cabramatta returning a key

A 22 year old male arrived at a drug premises in Cabramatta five minutes after police had begun to execute a search warrant. The magistrate was satisfied that the premises were drug premises.<sup>483</sup> The man said that he had gone to the premises to return car keys that he had borrowed the night before. Although the defendant said that he had stayed at the house the night before, and admitted that he had smoked drugs while he was there, the magistrate concluded that:

*An interpretation in my view as to being there the night before does not ground sufficient reason to extend a definition pursuant to section 12, and therefore does provide him, in my view, with a defence in relation to a lawful purpose or excuse being to return the car keys that Mr Tran may well have given him.*<sup>484</sup>

In this case, the magistrate accepted the lawful excuse put forward by the defendant because, at the particular time when the man was found on the drug premises by police, he was returning car keys.

## Case study 9.

### Boyfriend goes to girlfriend's house for dinner

Police suspected that one of the male occupants (occupant A) of the house was involved in the commercial supply of heroin. One afternoon, his vehicle was stopped and searched by police after they received information that he was to take a delivery of drugs that day. No drugs were found in the car. An urgent application for a Part 2 search warrant was then made with the after hours magistrate "to prevent the loss of evidence".<sup>485</sup> Police were concerned that occupant A was aware of their interest due to the vehicle stop that afternoon.

<sup>478</sup> One was 20, one was 21, and the other 25 years old.

<sup>479</sup> These were Asian males, aged 15, 17 and 21 years.

<sup>480</sup> Campbelltown Children's Court, *Police v. [defendant's name]*, 4 February 2002.

<sup>481</sup> At the time of writing, this fine was unpaid, and had been referred to the State Debt Recovery Office Personal communication, Campbelltown Children's Court, 11 December 2003.

<sup>482</sup> Fairfield Local Court, *Police v. Bao Lam*, 26 November 2001, p. 3

<sup>483</sup> Liverpool Local Court, *Police v. Tula Ong, Nhep Siv and Simean Sun*, 11 June 2003, p. 33

<sup>484</sup> Ibid.

<sup>485</sup> Part 2 Search Warrant Application, State Crime Command, Drug Premises Incident 3.



Officers from the State Crime Command executed a Part 2 search warrant that evening. When police arrived at the house, they heard the toilet flush and suspected that drugs had been destroyed before they were able to gain entry. They noted the existence of several security measures in an event narrative, including a heavy duty security screen on the front door, roller shutters on all the windows, and a closed circuit camera that was installed but not operating.<sup>486</sup>

Inside the house, members of occupant As family were present, including his parents, sisters, brother and a young child. They arrested occupant A, his girlfriend, and another man, who was the boyfriend of one of occupant As sisters. All were charged with being found on drug premises. Police allowed the other members of occupant As family to go, and in the event narrative, stated:

*Due to investigations made into the three co-defendants they were arrested. The rest of the family were warned that ignorance of the defendant's activities could have led to their arrests, but discretion was exercised and they were not arrested.*<sup>487</sup>

When they searched the house, police found a razor blade, digital scales "of a style that are known to be used in the preparation of drugs for supply",<sup>488</sup> resealable plastic bags, aluminium foil cut into small squares, and a safe. Police did not find any drugs.

The boyfriend found on the premises pled not guilty to the charge against him. He conceded that he was found on drug premises, but that he did not know they were drug premises at the time.<sup>489</sup> He said that he had a lawful excuse for being there, which was that he had been invited over to dinner by his girlfriend. He explained what had taken place that evening to the magistrate:

*Shortly after I arrived, I'd been there earlier in the day and I left to do some work and when I returned about ten, fifteen minutes I was sitting in the dining lounge area watching TV, just waiting for the meal to be finished being prepared and the police entered the premises... now that everything's explained to me I realise that the premises were drug premises but at the time I had no knowledge of that.*<sup>490</sup>

The magistrate said that he was satisfied that the premises were drug premises, but found that the boyfriend had a lawful excuse for being on the premises. He stated:

*Mr Smith does not dispute that the premises were in fact drug premises but he relies on the statutory defence that he was present on those premises for a lawful purpose or with a lawful excuse. Although given the apparent level of drug activity in those premises, I have some difficulty understanding how a person would not be aware of what was going on, I find that on the balance of probability I am satisfied that Mr Smith was there for a lawful purpose and accordingly, the prosecution fails.*<sup>491</sup>

## Case study 10.

### Woman stays for video and sleeps over

There was another case, relating to a use of the Act in Cabramatta, in which the premises were also found to be drug premises. The lawful excuse put forward by the defendant was that she had been invited over for dinner. She and her husband had watched a video at the flat after dinner, and then stayed the night. It was established that drugs were supplied over a balcony, and the only access to it was off the room where the woman and her husband were sleeping. The magistrate noted in his judgement that the evidence that the woman was asleep when the drug dealing took place was not challenged. He accepted that the woman had a legal reason to be on the premises, and that she had therefore satisfied the onus of proof upon her, and the charge of being found on drug premises was dismissed.<sup>492</sup>

<sup>486</sup> COPS event narrative, State Crime Command, Drug Premises Incident 3.

<sup>487</sup> Ibid.

<sup>488</sup> Ibid.

<sup>489</sup> Liverpool Local Court, *Police v Matthew Valentine Smith*, 23 May 2002, p.4

<sup>490</sup> Ibid, pp 5-6.

<sup>491</sup> Ibid, p. 11.

<sup>492</sup> Liverpool Local Court, *Police v Trang Thi Pham*, 4 November 2002, p. 10.

## Case study 11.

### Six men found on drug premises in inner city Sydney

Police conducted surveillance on a house in inner city Sydney that indicated the premises was used for the supply of heroin. A search warrant was executed. Six Aboriginal men, aged from 19 to 51 years, were found in the house.<sup>493</sup> Two other men who had also been standing outside when police arrived to execute the warrant fled, “and made good their escape”.<sup>494</sup> All six inside the house were charged with being found on drug premises.

On the issue of whether the defendants had a lawful excuse for being on the premises, the event narrative states:

*Once police had established the premises was being used for the supply of prohibited drugs. The occupants were questioned, with not one of the occupants being able to give the actual name of the lessee of the premises nor could they give a valid reason for being in the premises.*<sup>495</sup>

At court, the defendants did not dispute that the premises was a drug premises, or that each was there. However, each pleaded not guilty and put forward a lawful excuse for being on the premises.<sup>496</sup>

At court, the 19 year-old defendant said that he had arrived at the house five minutes before police arrived to execute the search warrant. He said he was waiting for someone in the street, and that the front door of the house was open. He saw two people he knew sitting in the front room, and went in to watch TV.<sup>497</sup> Another defendant, a 22 year old male, said that he had arrived at the house about 30 minutes before the police and had gone there to see his cousin and that it was a place to hang out.<sup>498</sup> A third, a 19 year old, said that he had gone there to “see mates”.<sup>499</sup> The fourth defendant, a 30 old male, said that he was visiting his aunty who lived across the street from the house. He said he saw the boys across from her house and went over to borrow a fork so he could eat the takeaway spaghetti bolognaise he had just bought.<sup>500</sup>

The magistrate found that there had been “no specific evidence to dispute what each of the defendants had said in regard to why they had come to the premises, nor had there been any evidence to dispute their relationship to the premises. In dismissing the charges against all of the defendants, the magistrate said that each had satisfied the magistrate that:

*... whilst they were on drug premises that in relation to the evidence before [me they] have satisfied me that they were there for a lawful purpose or with a lawful excuse.*<sup>501</sup>

## 6.5. Residents of drug premises: dual purpose drug premises

In the second reading speech on the Drug Premises Act, the Attorney General stated that it is “characteristic of drug premises that they are not used for lawful or domestic purposes”.<sup>502</sup> The Attorney General also said that the reverse onus was not taken lightly, but because drug premises are not used for lawful or domestic purposes, it was reasonable to expect persons to show why they are on premises that have been proven to be drug premises.<sup>503</sup>

In our review of the legislation, almost all drug premises appeared to be domestic residences. These premises appeared to have a dual purpose: as both domestic residences, and locations where illicit drug supply or manufacture was taking place. In one case involving this type of domestic drug premises in Cabramatta, documented in the case study below, the magistrate reflected on the description of drug premises in the second reading speech, and stated his view that drug premises could have a duality of function:

<sup>493</sup> Two of the men were 19, the others were 20, 22, 30, 49 and 51 years old.

<sup>494</sup> COPS event narrative, Inner Metropolitan Region, Drug Premises Incident 1.

<sup>495</sup> Ibid.

<sup>496</sup> Two the defendants did not appear in court, and one was later convicted in his absence. Downing Centre Local Court, *Police v Daniel Bruce Munro*, 22 April 2002, p. 1

<sup>497</sup> Downing Centre Local Court, *Police v John Anthony Carr, Simon Robert Miles, Alexander Bruce Walker, Blake Edward Morgan*, 10 April 2002, p. 5.

<sup>498</sup> Ibid, p.15 and p.18.

<sup>499</sup> Ibid, p.27.

<sup>500</sup> Ibid, p. 42.

<sup>501</sup> Ibid, p. 56.

<sup>502</sup> The Hon. R. Debus, NSWPD, second reading speech, 30 May 2001, p. 13997.

<sup>503</sup> Ibid.

*The second reading speech, which gives some assistance to the interpretation of matters of lawful excuse and lawful purpose, suggests that it is a characteristic of drug premises that they are not used for lawful or domestic purposes, so it is reasonable to expect persons to show why they are there once it is proven that the premises are used for the manufacture and supply of a prohibited drug.*

*In relation to this matter, I disagree in the sense in which that is being put, but it seems to me that premises can have a duality of function, and this was a unit which the police entered, which contained two bedrooms, which on the evidence before me, appeared to be occupied, and the evidence suggests, not challenged, that the premises had been so occupied by the defendant and her husband for a period of two years under a lease agreement with the owner. There were indicia of occupation on a residential basis...<sup>504</sup>*

Most of the concern in relation to the reversal of the onus of proof has centred on the use of the legislation on premises with a dual purpose, particularly domestic residences. A key question is whether people who are not involved in unlawful activity may have difficulty proving their innocence. Some of the scenarios raised in parliamentary debate on the Act included households in which illicit drug activity may be taking place without the knowledge and/or consent of all occupants. One member of parliament expressed the following concerns:

*What if a girlfriend or the child of a drug dealer is found on the premises but his or her name does not appear on the lease? How will such a person substantiate a lawful reason for being on the premises? We have the quite likely scenario of an individual who has never sold or used prohibited drugs and is only remotely connected to someone who has been arrested, charged and convicted for being on the premises of a drug house.<sup>505</sup>*

There were instances in our review, as the case studies presented in this chapter show, of boyfriends, girlfriends and wives found on drug premises being charged under the Act. The circumstances of each case were quite different, as were the outcomes for the defendants.

It appears that where premises do have a dual function, the task of establishing if the defendant had a lawful purpose or reasonable excuse for being on the premises becomes more complex. The case studies below demonstrate this complexity.

## Case study 12.

### Dual purpose drug premises – wife of lessee found on drug premises, lawful excuse accepted

Police conducted a controlled operation<sup>506</sup> in the early hours of the morning on a flat in Cabramatta. During the operation, they observed about 20 people approach the unit. They saw them knock on the rear brick wall or whistle and yell out. An empty cigarette packet attached to a string was then lowered down from the rear balcony. The drug purchaser placed money in the empty packet, and it was raised up to the balcony. The drug deal was then thrown down.

Police conducted several controlled drug buys from the unit and were then granted a drug premises search warrant. Police executed the search warrant early that morning.

When police arrived, the defendant was in bed, with the door half open. Her husband and another couple were also in the flat when police arrived. In an event narrative relating to this incident, police stated:

*The defendants were allegedly sleeping in the two rear bedrooms where Police observed the dealers to exit a glass door leading onto the balcony to supply the drugs. This glass door made a lot of noise when opened, which Police could hear from some distance away. Further to this, all persons Police saw attending the unit either whistled, shouted out, or knocked on the wall with a brick to get the attention of the occupants.<sup>507</sup>*

As police were entering the premises to execute the search warrant, they saw a canister being thrown over the balcony. The canister contained thirty eight foils of what police suspected to be cocaine, weighing 6.66 grams. They also found \$6,089 cash under a chest of drawers in the bedroom. No drugs were found inside the premises. The front door had several dead locks on it. In the event narrative, police noted that the woman and her husband were unemployed, yet the unit “contained a large amount of current valuable furnishings and other items”.<sup>508</sup>

<sup>504</sup> Liverpool Local Court, *Police v Huong Lan Nhan*, 7 February 2002, pp.19- 20.

<sup>505</sup> Ms L. Rhiannon, NSWPD, 7 June 2001, p. 14626.

<sup>506</sup> “Controlled operations” are defined in s. 3 of the *Law Enforcement (Controlled Operations) Act 1997*, as an operation conducted for the purpose of either obtaining evidence of “criminal activity or corruption conduct”, “frustrating criminal activity or corrupt conduct” or an arresting a person involved in criminal activity or conduct. One type of controlled operation that may be conducted in drug investigations involves undercover police officers conducting “controlled drug buys” from suspected drug dealers.

<sup>507</sup> COPS event narrative 1, Cabramatta, Drug Premises Incident 11.

<sup>508</sup> COPS event narrative 2, Cabramatta, Drug Premises Incident 11.

The magistrate was satisfied that the premises were drug premises. The woman pleaded not guilty, and said that she had a lawful excuse for being there, and she stated in evidence:

*That unit was rented by my husband and it's natural that I'm there, I was there because that's the unit rented by my husband.*<sup>509</sup>

In considering whether she had a lawful excuse for being found on the premises, the magistrate noted that her evidence that she had been asleep and had woken when police entered, had not been challenged. Nor had the evidence of her claimed ignorance of the items thrown over the balcony, of the whistling and knocking, of the money that was found, of the people who had been moving about the unit, or of the fortification of the door been tested. Accordingly, the magistrate found:

*In my view, because it is possible to show that there is a duality of purpose, or a multiplicity of purpose for a particular premises, it must be incumbent on the prosecution at the end of the day to show that there is some knowledge or otherwise, or connection of an accused person with the nature of the premises being alleged. There may be situations, for example, where a person owns a shop on which it is alleged, or through which it is alleged drugs are being traded, but there can also be quite a legitimate use of that shop for which a lawful purpose in occupation or being on those premises can also apply [emphasis added].*<sup>510</sup>

## Case study 13.

### Dual purpose drug premises – girlfriend on premises with a clandestine laboratory in granny flat, lawful excuse not accepted

In this case, a drug manufacturing operation had been set up in a house in a town north of Sydney. A woman and her boyfriend were joint lessees of the house. The magistrate was not satisfied that the woman had a lawful excuse for being on drug premises.

Police from the State Crime Command were investigating the manufacture and distribution of amphetamines. They received information that one of their targets, a male, had organised to deliver a large quantity of amphetamine to a person on a street corner. On the day in question, the man was seen driving in the area and, while under police surveillance, was seen to stop and:

*... leave his vehicle and walk to the footpath area, whilst holding a light blue plastic bag. The accused was seen to place the plastic bag on the grass area approximately 6 metres from his vehicle.*<sup>511</sup>

Police then approached him and identified themselves. The bag contained a "red moist powder substance"<sup>512</sup> that police believed was approximately 280 grams of pure amphetamine. The man was arrested, cautioned and taken back to his house. Police then executed a Part 2 search warrant and found a clandestine laboratory set up in a granny flat attached to the rear of the house.<sup>513</sup> His 21 year old girlfriend was home when they arrived.

Police found a number of items relating to drug manufacture in the granny flat, as well as some items in a bedroom in the house. They also found a four litre container of liquid in the lounge room, and methylamphetamine in the fridge.

Items found in one of the bedrooms included thermometers, clamps, a separating funnel, two lengths of clear plastic hose, glass receiver adapters, white ceramic stirrer bars and plastic containers filled with ph test strips. Four hundred and ninety empty blister packs of various medications including Sudafed and Sinus Nasal Decongestant were found in a garbage bag inside the wardrobe.<sup>514</sup>

<sup>509</sup> Liverpool Local Court, *Police v. Huong Lan Nhan*, 7 February 2002, p. 12.

<sup>510</sup> *Ibid.*, p. 21.

<sup>511</sup> COPS event narrative, State Crime Command, Drug Premises Incident 9.

<sup>512</sup> *Ibid.*

<sup>513</sup> Police note that the man was "placed under arrest and cautioned", and the "accused was then returned to his address". COPS event narrative, State Crime Command, Drug Premises Incident 9.

<sup>514</sup> Property Seizure Exhibit Form, State Crime Command, Drug Premises Incident 9.

In the granny flat, police found caustic soda, a gas iron hot plate, and a bag and several containers with white and pink powder residue. Forensic swabs were taken inside the granny flat. It was here that police believed that the drug manufacturing had taken place. Outside the house, in a garbage container in the backyard, police found the charred remains of pseudoephedrine boxes of various brand names, including Sudafed and Logicin.

The woman was a joint lessee on the premises. Her boyfriend had the only key to the granny flat outside. The woman's lawyer argued that she had a lawful excuse for being on the premises because it was her home.

The magistrate noted that the evidence of drug manufacturing was found throughout the house, in the garbage bin outside, and in the granny flat. He also took account of the fact that police believed that the drug manufacturing was taking place in the granny flat, and that the woman's boyfriend had the only key. But in considering whether the woman had a lawful excuse for being on the premises, the magistrate concluded:

*I must look at the whole of the evidence. The process of manufacture involves getting materials, treatment of them and disposition residues. In this case in the garbage bin. It is not to the point to say that manufacture occurs only where the chemical reaction takes place, even if it was in the granny flat.*

*I am satisfied beyond reasonable doubt the whole of the property was being used for the purposes of drug manufacture and beyond reasonable doubt the defendant was found on those premises.<sup>515</sup>*

The magistrate did not accept the argument that was put the woman's lawyer that she was the joint lessee of the premises, and was therefore on the premises for a lawful purpose:

*There is an evidentiary onus on the defendant to establish on the balance of probabilities her purpose there was lawful. There is no doubt she was the joint lessee. However, in the circumstances of this case where indicia of the manufacture of prohibited drugs was extant throughout the premises, I am not satisfied she has discharged the onus upon her.<sup>516</sup>*

The woman received a twelve month good behaviour bond.

These court cases, in which the drug premises in question were used for domestic purposes and for illicit drug activity, highlight the fact that it is possible to have both a lawful and an unlawful purpose for being on drug premises.

## 6.6. Demographic characteristics of people charged with being found on drug premises

In this section, we outline the available demographic information on people who were charged with being found on, entering or leaving drug premises.

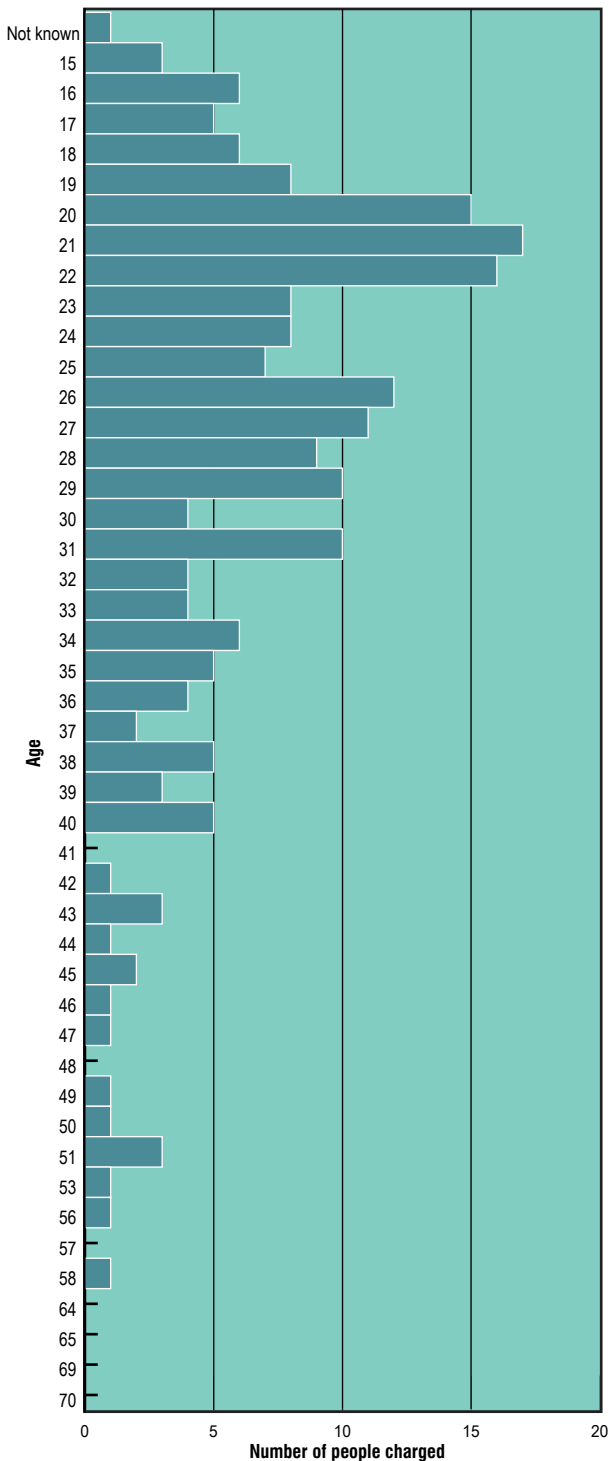
The tables set out below show that seven per cent of those charged with a first offence of being found on drug premises were under 18. One person charged with a second offence of being found on drug premises was under 18.

The graph below shows the ages of people charged with being found on, entering or leaving, drug premises.

<sup>515</sup> Toronto Local Court, *Police v. Roxanne Arohanui Rollinson*, 7 August 2002, p. 8.

<sup>516</sup> *Ibid.*

**Figure 11: Ages of people charged with being found on, entering or leaving drug premises-1st offence (n=211)**



Source: NSW Police data extracted from the COPS database.

As the graph above shows that the youngest person charged with being found on drug premises was 15, and the oldest was 58 years old.

The ages of the nine people charged with a second offence of being found on, entering or leaving drug premises ranged from 16 to 49 years old.<sup>517</sup>

The graph also indicates that a high proportion of people charged with this offence were in their 20s.

### 6.6.1. Gender

Seventy-five per cent (75%) of the 211 people charged with a first offence of being found on drug premises were male, and twenty five per cent (25%) were female.<sup>518</sup> Of the nine people charged with a second offence of being found on drug premises, seven were male, and two were female.

### 6.6.2. Aboriginal and Torres Strait Islanders

Nine per cent of those charged with a first offence of being found on, entering or leaving drug premises (19 people) were Aboriginal or Torres Strait Islanders.

One of the nine people charged with a second offence of being found on drug premises, one was Aboriginal.

### 6.6.3. Pleas and court outcomes for people charged with being found on, entering or leaving drug premises

The table below shows the type of plea entered by those people charged with being found on, entering or leaving drug premises.

<sup>517</sup> Their ages were 16, 21 (two people), 23, 27, 31, 34, 45 and 49 years old.

<sup>518</sup> Of the 211 people charged with a first offence of being found on drug premises, 158 were male and 53 were female.

**Table 6. Pleas entered and court outcomes for people charged with a first offence for being found on, entering or leaving drug premises**

Plea	Guilty (n=82)	Not Guilty (n=32)	Plea not entered (n=66)
Dismissed: no evidence offered	0	8	16
Dismissed: stood out of list	1	2	4
Dismissed: Non-appearance	0	0	1
Dismissed: after hearing	0	12	5
Dismissed: Mental Health	1	0	0
Adjourned to Adult Drug Court	1	0	0
Convicted ex parte (non- appearance)	3	5	33
Conviction proven	76	5	7

Data source: NSW Local Criminal Courts Statistics 1 July 2001- 30 June 2003, BOCSAR.<sup>519</sup>

Seven people who were charged with a second offence of being found on, entering or leaving drug premises were convicted.<sup>520</sup> Three people pleaded guilty, three pleaded not guilty, and one person who failed to appear at court was convicted ex parte.<sup>521</sup>

The table below shows the type of penalty received for those convicted of being found on, entering or leaving drug premises.

**Table 7. Being found on, entering or leaving drug premises (first offence), BOCSAR statistics, penalty type**

Penalty Type	Occurrence
Imprisonment (less than 3 months)	1
Imprisonment (3 –12 months)	16
Suspended sentence	3
Community Service Order	4
Bond with supervision (12 to 2 years or more)	8
Bond without supervision	13
Bond without conviction	1
Nominal sentence	1
Fine (less than \$1000)	16
Fine (\$1500 to \$2250)	3
Total	66 <sup>522</sup>

Data source: NSW Local Criminal Courts Statistics 1 July 2001- 30 June 2003, BOCSAR.

For a second offence of being found on, entering or leaving drug premises, three people received gaol terms of between three and 11 months. A further three people convicted of a second offence under this provision received a bond with supervision of between 12 months, and two years or more.

<sup>519</sup> Please note that all other statistics in this report relating to persons charged under the Drug Premises Act are from data provided to us by NSW Police.

<sup>520</sup> Court outcomes for the remaining two people charged with this offence were not provided.

<sup>521</sup> NSW Local Criminal Courts Statistics 1 July 2001- 30 June 2003, NSW BOCSAR.

<sup>522</sup> Information on penalty type was not available for people recorded as having been convicted of this offence.

## 6.7. Organising or conducting, or assisting in organising or conducting, drug premises

Under section 14 of the Drug Premises Act, it is an offence to organise or conduct, or assist in organising or conducting, any drug premises.

Section 14 also outlines the types of activities that may constitute an offence:

*For the purposes of this section, a person assists in organising or conducting drug premises if, for example, the person acts as a lookout, door attendant or guard in respect of any premises that are organised or conducted as drug premises.*<sup>523</sup>

Unlike the offence of being found on, entering or leaving drug premises discussed above, which suggests a passive state of being on drug premises, to organise, conduct or assist in organising or conducting drug premises, suggests a more active involvement in operation of the drug premises.

The statutory defence that is available to a person who is charged with this offence is as follows:

(2) *A person is not guilty of an offence under this section of organising or conducting drug premises or of assisting in organising or conducting drug premises if the person satisfies the court that he or she did not know, and could not reasonably be expected to have known, that the premises were being organised or conducted as drug premises.*<sup>524</sup>

In relation to this offence, the onus of proof is also reversed. Again the standard to which the defence must prove that the person did not know or could not reasonably be expected to have known that premises were drug premises, is on the balance of probabilities.

Sixty-six charges for this offence were laid across the state, and three of these charges were laid for a second offence under this provision. One case study relating to this offence is set out below.

### Case study 14.

#### Organise, conduct or assist in conducting a car as a drug premises

Undercover police contacted a suspected drug dealer by phone and arranged to purchase one hundred dollars worth of heroin. Initially, the dealer arrived with a \$200 deal, and left to get the smaller quantity requested.

When the dealer returned in his car shortly after with the \$100 deal, there was a woman in the passenger seat. The dealer drove over to the wrong side of the road, and pulled alongside the driver's window of the car which had the undercover operatives inside.

The dealer spat the foil out of his mouth, and the undercover operative passed the money to him through the car window. When the drugs were handed over, the woman in the passenger seat leaned forward and glanced over. The car moved off, and about a minute later, was pulled over by police. The dealer and the woman were told by police to get out of the car, arrested, and taken back to the police station. The woman was charged with organising, conducting or assisting drug premises, and the man was charged with allow premises to be used as drug premises, as well as supply.<sup>525</sup>

At court, the woman said that she had bumped into the driver of the car when she was having lunch with some friends. She said she had not seen him for a while, and suggested that they have coffee. She said that she had asked him if he would then give her a lift to the cemetery to visit a grave afterwards. She got in the car, and after driving past several streets, he drove over to the wrong side of the road, and pulled up beside a car. She said she "glanced over the window, but ... didn't take much note to what was happening". She said that she was then asked to hold \$100. The woman's lawyer asked her questions about the events that unfolded including questions about her belief about the money:

Q: *When you got in the car, did you know that [driver's name] was going to supply drugs?*

A: *No.*

Q: *When he handed you the \$100 did you put that in your wallet to assist him in his drug supplying activities?*

A: *No.*<sup>526</sup>

<sup>523</sup> *Police Powers (Drug Premises) Act*, s. 14(2).

<sup>524</sup> *Police Powers (Drug Premises) Act*, s 14(3).

<sup>525</sup> He was ultimately sentenced to twenty months imprisonment for the supply offence, and twelve months imprisonment for the drug premises offence. He appealed. The sentence for the drug premises offence was not varied, but his non-parole period was reduced from fifteen to twelve months. Campbelltown District Court, Criminal Jurisdiction, *R v. Ton Nguyen*, Appeal, 7 December 2001.

<sup>526</sup> Liverpool Local Court, *Police v Hanh Thingoc Nguyen*, 19 June 2002, p.18.



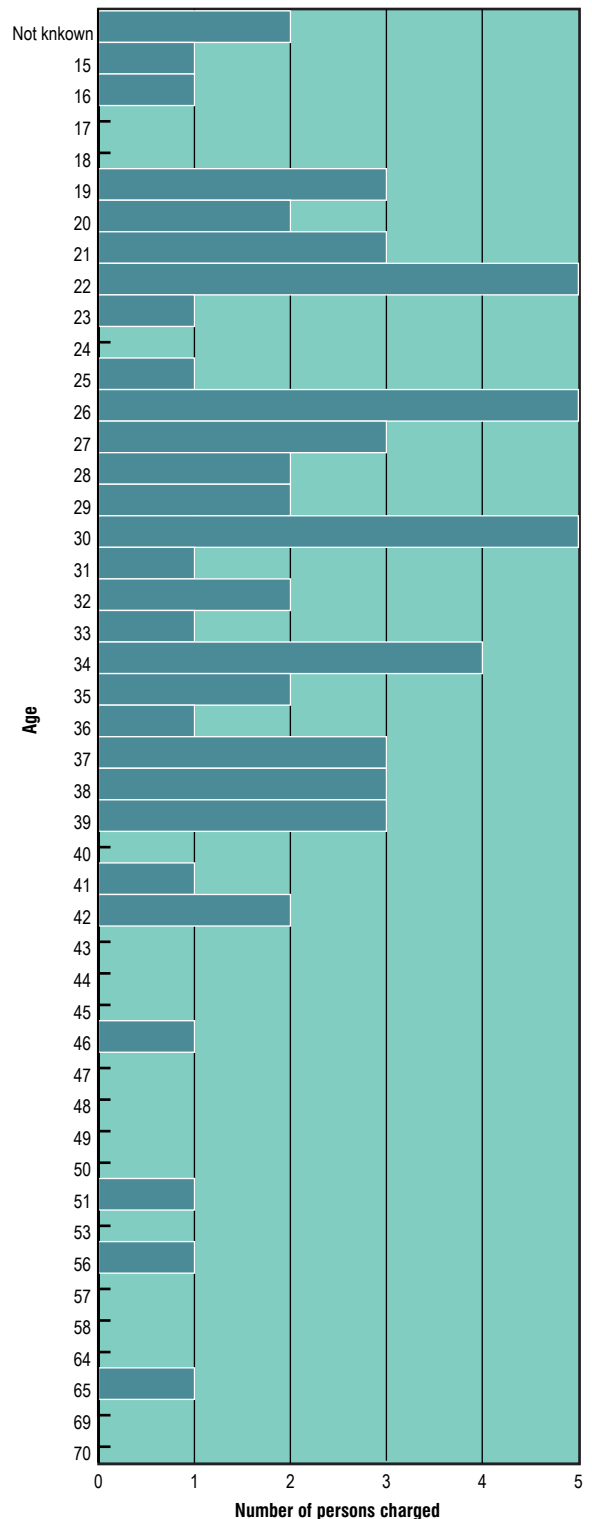
The magistrate said that he had a real and deep suspicion that the defendant knew that a drug deal was taking place, but that:

*... it's a big leap based on two physical motions and nothing else to being satisfied beyond reasonable doubt she knows that it's a drug deal that's going on, given the accepted fact between both prosecution and defence that she has only been in the car a minute or two, and I can't get away from the genuine possibility that the events did occur as Ms Nguyen says with no knowledge or possibility that the events did occur with no knowledge or complicity on her part and in terms of the supply and assist drug premises she has to get the benefit of that possibility.<sup>527</sup>*

### 6.7.1. Demographic information about people charged with organising, conducting or assisting drug premises

The table below, shows the ages of people charged with a first offence of organising, conducting or assisting drug premises.

**Figure 12: Age of people charged with organising or assisting drug premises – 1st offence**



Source: COPS database

<sup>527</sup> Ibid, p.35.

## 6.7.2. Gender of people charged with organising, conducting or assisting drug premises

Seventy five percent (75%) of those charged with a first offence of organising, conducting or assisting drug premises were male, and twenty five percent (25%) were female.

Two of the three people charged with a second offence under this provision were male, and one was female.

## 6.7.3. Aboriginal and Torres Straight Islanders

No Aboriginal and Torres Straight Islanders were charged under this provision.

**Table 8. Pleas and court outcomes for people charged with a first offence of organising, assisting or conducting drug premises**

Plea	Guilty (n=9)	Not guilty (n= 4)	Plea not entered or N/A (n= 19)
Convicted Ex parte (non- appearance)	0	8	6
Conviction proven	8		2
Dismissed: after hearing	0	1	
Dismissed: no evidence offered	0	3	8
Dismissed: stood out of list	1	0	3

Data source: NSW Local Criminal Courts Statistics 1 July 2001- 30 June 2003, BOCSAR.

Source: NSW Local Criminal Courts Statistics 1 July 2001- 30 June 2003, BOCSAR.

Of the four charges for a second offence of organising, assisting or conducting drug premises, all failed to appear and were convicted in their absence, and no plea had been entered.

In the table below, information on the penalties received by persons convicted of organising, assisting or conducting drug premises is set out.<sup>528</sup>

**Table 9. Organise, conduct or assist in organising or conducting drug premises (first offence) BOCSAR State-wide statistics, penalty type**

Penalty Type	Occurrence
Imprisonment (6- 12 months)	5
Suspended sentence	2
Bond with supervision (12 to 14 months)	1
Fine (less than \$500)	1
Total	9

Source: NSW Local Criminal Courts Statistics 1 July 2001- 30 June 2003, BOCSAR.

## 6.8. Offence by owner or occupier of allowing use of premises as drug premises

Section 13 of the Drug Premises Act provides that owners or occupiers who knowingly allow their premises to be used as drug premises may be charged with an offence:

<sup>528</sup> No data was available from BOCSAR on persons convicted of a second offence of allowing premises to be used as drug premises.

### 13. Allowing use of premises as drug premises

*A person who is the owner or occupier of any premises must not knowingly allow the premises to be used as drug premises.*<sup>529</sup>

Over the two year review period, 108 charges were laid under this provision in the Act. Of these charges, four were for a second offence under this provision.

Of those charged with a first offence of allow premises to be used, 83% (90 people) were occupiers, 12 % (13 people) were owners and 5% (5 people) were owner/occupiers. Of the four people charged with a second offence under this provision, two were occupiers, one was an owner, and one was an owner/occupier.

This provision would appear to be aimed at those who are involved in organising, and profiting from, drug premises. Criminal asset confiscation provisions also apply to those people convicted of a second or subsequent offence of allowing use of premises as drug premises.<sup>530</sup> For an owner or occupier to be found guilty of allowing premises to be used as drug premises, the prosecution must prove that the owner/occupier knowingly allowed their premises to be used for this purpose. Therefore, unlike the two offences discussed above, the onus of proof is not reversed. In order to successfully prosecute a person for this offence, there must be some act or conduct that proves that the defendant had this knowledge.

Police anticipated from the outset that there may be difficulties in proving this offence. This is evident in training material prepared on the Act.<sup>531</sup> One officer from Cabramatta said that with this offence, "you've got to prove knowledge, we run into that problem a lot" and that "the knowledge one is a lot more difficult".<sup>532</sup>

In relation to the requirement that the prosecution must prove knowledge, the NSW Legal Aid Commission stated in its submission to our discussion paper that:

*As a matter of principle, the Legal Aid Commission is of the view that all offences should require proof of mens rea<sup>533</sup> and that the current barriers should remain untouched.*<sup>534</sup>

In our discussion paper, we asked respondents to indicate if there had been any unnecessary difficulties in proving this offence. NSW Police reported that there had been difficulties in proving this offence, particularly in some LACs.<sup>535</sup>

## Case study 15.

### Allowing premises to be used as drug premises in Cabramatta, non-continuous occupation of the premises

In this incident, a drug premises search warrant was applied for and granted in relation to a house in Cabramatta. Over the preceding couple of days, several successful controlled drug buys had been conducted through the bars of a bedroom window in the house.

The search warrant was executed at 11.00 pm that night. Police rescue were in attendance, and cut through a security grill on the front door after attempts to get the occupants to open the door were ignored. When they entered, police note in the event narrative that they found a 28 year old Asian male in the main bedroom, who they subsequently charged with being found on drug premises.

Half an hour after police arrived, a female resident returned home. When she was searched by police, \$1,300 was found in her back pocket. The woman was charged with goods in custody, and with allowing her premises to be used as drug premises. A 21 year old Asian woman who was also found on the premises was also charged with being found on drug premises.

At court, the magistrate considered that there was ample evidence that the premises were drug premises when the search warrant was executed, and that it was evident that the woman was an occupier of the premises from time to time. The prosecution put the following argument to the court that the woman had knowingly allowed her house to be used for drug supply:

<sup>529</sup> *Police Powers (Drug Premises) Act*, s. 13.

<sup>530</sup> *Criminal Assets Recovery Act*, s (2)(e1) and s 6(4). This provides for the initiation of civil proceedings that may result in the seizure of the assets or "interests" of a person who has been convicted of this offence on more than one occasion.

<sup>531</sup> NSW Police, Training Video, *Police Powers (Drug Premises) Act*, undated (circa, July 2001).

<sup>532</sup> Focus group, Cabramatta Police, 2 July 2003.

<sup>533</sup> "Mens rea" or "guilty mind", refers to a test that applies to a number of criminal offences relating to the state of mind of the accused, in which the prosecution is required to prove that the accused had a "guilty mind" when the offence was committed.

<sup>534</sup> NSW Legal Aid Commission, Submission, 30 July 2003.

<sup>535</sup> NSW Police, Submission, received, 12 August 2003, and Submission received from the NSW Police Drug Squad, 1 August 2003.

*She is a resident of those particular premises where drugs are sold for and with a, in my submission, a large amount of cash on her on the particular day that she [was spoken] to by the police. An inference is there, a large amount of cash returned, premises openly being used for drug distribution, there is an inference that the Court could draw in respect, to the issue of knowingly...*<sup>536</sup>

In response to this, the woman's lawyer argued that if the money found on her was the proceeds of drug sales at the house, "you'd think ... she'd be coming to the drug premises to get the bank notes",<sup>537</sup> and not returning the money to the house. Her lawyer also pointed out that the woman had been away from the house for three days and had not been present when the controlled drug buys had been conducted.

The magistrate found that there was no prima facie<sup>538</sup> evidence that the woman knowingly allowed the premises to be used as drug premises. This finding was on the basis of several factors. Firstly, she was not a continual occupant of the premises, but was "coming and going from time to time".<sup>539</sup> Secondly, there was no evidence from the undercover operatives or other police that when she was present, or that she had been deliberately turning a blind eye to drug dealing taking place. Had there been evidence of this, the magistrate said that "wilful blindness could certainly at least at a prima facie level satisfy the court as to knowingly". However, the magistrate found that:

*...there's nothing about the circumstances of the defendant's return to the premises, that take it to the category of wilful blindness and accordingly I do not consider that the prosecution have established that there is a prima facie case because there is no material that could satisfy the court in the whole of the crown case as to any evidence of knowingly allowing.*<sup>540</sup>

The goods in custody charge that related to the \$1,300 found on the defendant was also dismissed, with the magistrate finding that the "link between those actual bank notes and illicit activity hasn't been established ... beyond reasonable doubt".<sup>541</sup>

In the above case, the fact that the defendant had not been a continual occupant of the house was a significant factor in her defence that she had not knowingly allowed her premises to be used as drug premises.

## Case study 16.

### Non-continuous occupation of an inner city drug premises

A controlled operation had been conducted prior to the execution of a drug premises search warrant in an inner Sydney suburb. Undercover officers had gone to the back lane behind a house and purchased heroin. A drug premises search warrant was executed on the premises early one morning. Simultaneous search warrants were executed on two other houses in the same street.

At court, in summing up the prosecution case in relation to a defendant who had been charged with allowing the premises to be used as drug premises, the magistrate said:

*... there was a controlled operation going on and a number of undercover operatives participated in the controlled drug [buys] on different days and that the sales were conducted it appears from the rear of [address] which is the premises occupied by the defendant. When the house was searched there were a number of drugs on the premises being marijuana and cocaine. As I have mentioned the prosecution has alleged in their submissions that the drugs being sold are heroin. All dealings were done at the rear of the house and there were syringes etc the morning after the defendant had been arrested.*<sup>542</sup>

The magistrate found that the defendant had not knowingly allowed the premises to be used as drug premises. There were several reasons for this, as the following extract from the judgement shows:

<sup>536</sup> Liverpool Local Court, *Police v Lan Chau Nguyen*, 29 April 2002, p. 5.

<sup>537</sup> Ibid.

<sup>538</sup> Prima facie means "on the face of it", and refers to whether there is sufficient evidence to support an allegation that has been made. The prosecution must make out a prima facie case, otherwise the defence will submit that there is no case to answer, and if this submission is successful, the case will be dismissed.

<sup>539</sup> Liverpool Local Court, *Police v Lan Chau Nguyen*, 29 April 2002, p. 7.

<sup>540</sup> Ibid.

<sup>541</sup> Ibid, p. 8.

<sup>542</sup> Downing Centre Local Court, *Police v Eric John Honeysett*, 22 May 2003, p. 33.

*The defendant says he was not there the last couple of days, he was not sure who was staying there, not aware of what was going on ... The defendant's submissions are that the weight relies on the evidence of the prosecution ... that there was no evidence linking the defendant to any transactions, he was not observed, there was no surveillance of him and all he appears to be that he was the lessee of the premises and it seems to be uncontradicted that the premises are openly used by a number of people, a bit of an open house, and communal area.<sup>543</sup>*

In their submission to our discussion paper, the State Crime Command commented on the fact that the offence of allow premises to be used was found not proven in this case, stating that:

*Advice from the case officers of these matters indicate that difficulties with the "allow premises to be used" arose in providing direct evidence that the owner knew that the premises were being used as a drug premises. It did not appear that the observations carried out by police in the days prior to the execution along with the items found in the houses (syringes, balloons, foil, small amount of drugs) were sufficient to show that the owner was aware of these activities.<sup>544</sup>*

## Case study 17.

### A fortified, non-domestic premises in Cabramatta

Police had prior intelligence in relation to the premises. They went to the unit one afternoon, and spoke to several drug users who had just left it, and who admitted having bought drugs from the unit. That day, police executed a drug premises search warrant on the unit.<sup>545</sup> Police found three Asian men on the premises.

Two men, aged 30 and 44, were charged with on, enter, leave drug premises. Each received a 12 month term of imprisonment. However, on appeal, each sentence was reduced to four months. The 43 year old occupant of the unit was charged with allowing his premises to be used as drug premises. He represented himself at court. He believed that he had to plead guilty because, in his words, "after I realise that there was someone in my house sell drug, I admitted".<sup>546</sup> His plea was later changed to not guilty. The magistrate found that, beyond reasonable doubt, the premises were drug premises. Outlining why he had determined this, the magistrate noted that police had seen a number of people coming to the premises in the early hours of the morning, and going to a window:

*...there is certain conclusions that the Court can in fact draw from people approaching the house at that hour of the morning with the door being closed, the door being fortified, the hole in the screen, the needle and foil in a prominent place in the kitchen, the razorblade being there, which circumstantially, in my view, could lead to the finding, beyond a reasonable doubt, that the premises were a drug house.<sup>547</sup>*

However, the magistrate found that the only evidence that he knowingly allowed the premises to be used as drug premises was some of the indicia which is said to support the drug house. The magistrate said:

*Of that indicia, there is no evidence that this defendant was involved in the supply. There is no evidence that this defendant - or any documents tie him with supply. There is no evidence which said that it came from the people who attended came to his window, and nor is there any evidence that directly points to his knowledge.*

*IN MY VIEW, THERE IS A REAL DOUBT IN RELATION TO WHAT HIS KNOWLEDGE WAS, AND IT HAS TO BE PROVEN BY MORE THAN THE PRESENCE AT THE PREMISES, DESPITE THE FACT THAT HE HAS A CONNECTION TO THAT PREMISES BY VIRTUE OF THE LEASE. PROVIDED THE FACT THAT THERE IS THAT DOUBT ON THE ISSUE OF KNOWINGLY ALLOWING IT TO BE USED AS DRUG PREMISES, I FIND THE OFFENCE DISMISSED. I FIND IT NOT PROVEN BEYOND A REASONABLE DOUBT, THE INFORMATION IS DISMISSED [original emphasis].<sup>548</sup>*

<sup>543</sup> Ibid.

<sup>544</sup> NSW Police, Submission, received, 13 August 2003.

<sup>545</sup> This case is also discussed in the chapter on the use of the Drug Premises provisions in Cabramatta.

<sup>546</sup> Liverpool Local Court, *Police v. Dang Nihn Nguyen*, 20 February 2002, p. 5

<sup>547</sup> Ibid, p. 8.

<sup>548</sup> Ibid, p.8.

## Case study 18.

### Woman takes the fall for husband, allowing premises to be used as drug premises

In this case, a woman was convicted of allowing the premises to be used as drug premises.

Police had information regarding the commercial supply of a large quantity of heroin within the Sydney metropolitan area. They had identified a number of principles in the operation. Police also had phone intercept evidence that heroin was being pressed and supplied at a house in western Sydney.

Officers arrived at 4.50 pm to execute a Part 2 search warrant at the house, and a woman answered the door. Police noted in the event narrative that the premises was “fortified with steel bar and grills on all of the doors and windows”.<sup>549</sup>

When they searched the house, police found a hydraulic press and a mortar and pestle in the kitchen/laundry area. Several items were found in the defendants’ bedroom, including \$20,000 cash in a drawer next to the bed, and \$6,000 in a chest of drawers. Under the mattress, a Phoenix self-loading pistol and a box of ammunition were also located. Traces of drugs were found on the money and on drug manufacturing equipment that was found in the house.

The woman, who was a mortgagee of the premises, was charged with allowing the premises to be used as drug premises, goods in custody (relating to the money that was found), and storing a firearm unsafely.

The magistrate found that all of these items, “not individually, but collectively” could amount to a charge of allowing premises to be used, and that the “only real issue ... is a matter of knowledge”.<sup>550</sup>

The woman claimed that the scales, the press and the firearm were brought to her house by a man she knew only by his first name, and about whom she knew little else. The woman said the money had been given to her by her estranged brother in law for safekeeping. In considering the woman’s evidence, the magistrate said:

*I have trouble in accepting the fact that the Defendant did not know what these items were that were brought to the house, bearing in mind the size of them and the fact that she didn’t know that drugs could, in fact, be manufactured at the premises. She, in fact, occupies the premises herself. As I say, the equipment certainly is something that she could not help but notice and as for saying she wasn’t aware, that the pistol was wrapped up in this blanket I have also trouble accepting. In fact, her initial response to question 190 in the Record of Interview was that she didn’t even know what a gun looked like. Again, I have trouble accepting the fact, as I say that she had a limited knowledge of [man’s first name] background, she allows him to enter the premises and place this gun underneath her bed.<sup>551</sup>*

The magistrate said that when the evidence is looked at collectively, the only reasonable hypothesis was that the defendant was “aware that the equipment was used in the manufacture of drugs and that she must have known that drug activity was taking place at the premises”.<sup>552</sup> The magistrate found all the offences proved beyond reasonable doubt.

In sentencing the defendant, however, the magistrate considered the level of involvement that she had had in the drug manufacturing operation, determining that there was a “fairly strong inference that she’s the fall guy” and that “although everything’s found on the premises that she’s played a very minor part other than the fact that she owns the premises”.<sup>553</sup> The prosecution had conceded that the main participant in the activities at the house was the woman’s husband, but that there “wasn’t enough evidence to proceed against him”.<sup>554</sup> In sentencing the woman, a 37 year old Vietnamese woman who did not speak English, the magistrate said:

*... although certainly she knew it was going on but maybe because of custom, background, religion, whatever, rather than speak up she just accepted the fact that it was going on and did nothing about it rather than play an active role herself.<sup>555</sup>*

She was given a 12 month good behaviour bond for allowing her premises to be used as drug premises, she was fined \$1,059 for possession of a firearm, and \$500 for not keeping a firearm safely. She also received a six month suspended sentence for goods in custody, and the \$26,000 was forfeited, as were all other items seized during the search warrant, to the Crown.<sup>556</sup>

<sup>549</sup> COPS event narrative, State Crime Command, Drug Premises Incident 8.

<sup>550</sup> Bankstown Local Court, *Police v My Thi Nguyen*, 14 January 2003, p.7.

<sup>551</sup> *Ibid*, p.8.

<sup>552</sup> *Ibid*, p.8.

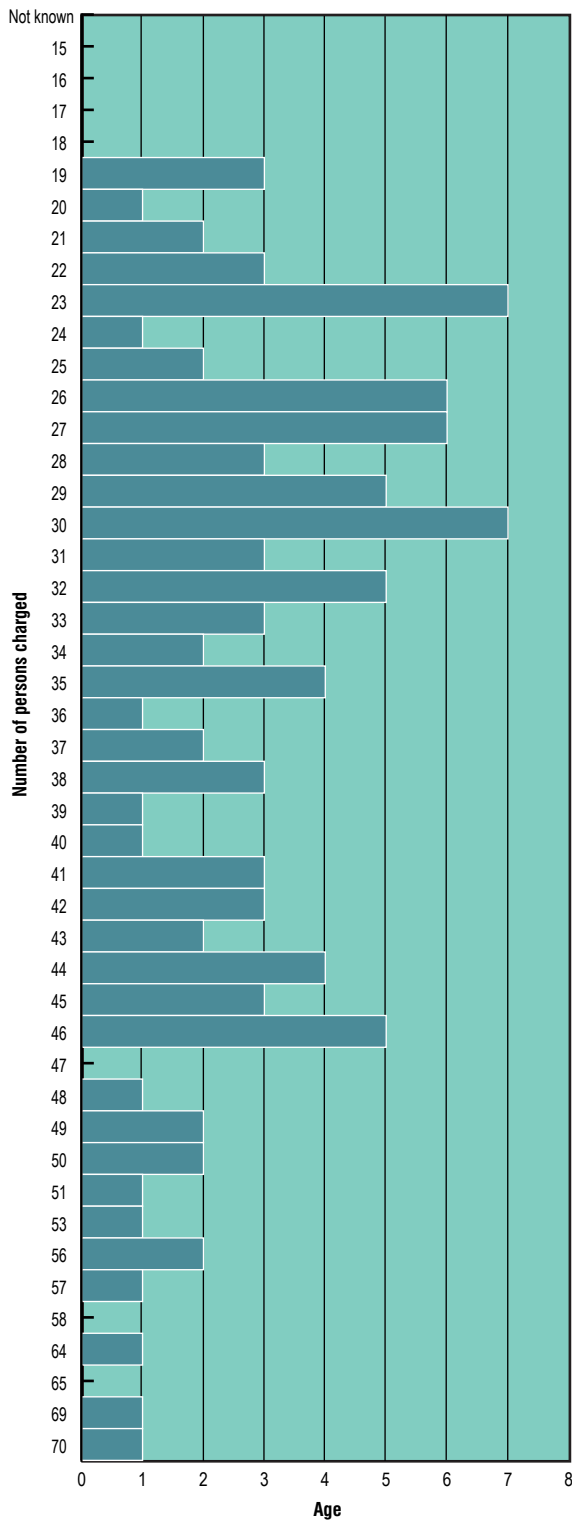
<sup>553</sup> *Ibid*, p. 9.

<sup>554</sup> *Ibid*, p. 10.

<sup>555</sup> *Ibid*, p.11.

<sup>556</sup> *Ibid*, p.11.

**Figure 13: Ages of people charged with allow premises to be used as drug premises – 1st offence**



Source: COPS database

### 6.8.1. Demographic characteristics of people charged with allowing their premises to be used as drug premises

The graph to the left shows the ages of people charged with allowing their premises to be used as drug premises.

The ages of people charged with a second offence of allowing premises to be used as drug premises were 23, 34, 36 and 57.

### 6.8.2. Gender of people charged with allowing premises to be used as drug premises

Sixty-two per cent (62%) of those charged with a first offence of allowing their premises to be used as drug premises were male, and thirty-eight per cent (38%) were female. Three of the four people charged with a second offence of allowing their premises to be used as drug premises were male, and one was female.

### 6.8.3. Aboriginal and Torres Straight Islanders charged with allowing premises to be used as drug premises

Nine percent (9%) of the people charged with a first offence of allowing premises to be used as drug premises were Aboriginal/Torres Straight Islanders. None of those charged for a second offence under this provision were Aboriginal/Torres Straight Islanders.

Of those two charges for a second offence under this provision, both were dismissed no evidence offered, and no plea had been entered.

In the table below, we have set out information on the penalties received by people who were convicted of allowing their premises to be used as drug premises.<sup>557</sup>

<sup>557</sup> No data was available from BOCSAR on persons convicted of a second offence of allowing premises to be used as drug premises.

**Table 10. Allowing premises to be used as drug premises (first offence) BOCSAR State-wide statistics**

Plea	Guilty (n=17)	Not guilty (n=16)	Plea not entered or N/A (n=32)
Adjourned to Adult Drug Court	0	0	0
Convicted ex parte (non-appearance)	0	0	5
Conviction proven	14	3	1
Dismissed: after hearing	0	10	6
Dismissed: mental health	0	0	0
Dismissed: no evidence offered	2	3	17
Dismissed: on appearance	0	0	0
Dismissed: stood out of list	1	0	3

Source: NSW Local Criminal Courts Statistics 1 July 2001 – 30 June 2003, BOCSAR.

**Table 11. Allowing premises to be used as drug premises (first offence) BOCSAR State-wide statistics: Penalty type**

Penalty Type	Occurrence
Imprisonment (3 – 8 months)	6
Suspended sentence	1
Community service order	1
Bond with supervision	1
Bond without supervision	1
Fine	1
Total	11

Source: NSW Local Criminal Courts Statistics 1 July 2001- 30 June 2003, BOCSAR.

#### 6.8.4. Offences that relate to the obstruction of police during the execution of a drug premises search warrant

In addition, there are three offences in the Drug Premises Act that relate to the obstruction of police during the execution of the search warrant. A person may be convicted of these offences even if premises are not proven to be drug premises, and the maximum penalty for each of these offences is 12 months imprisonment or a fine \$5,500, or both. These offences are:

- to wilfully prevent a police officer from entering or re-entering premises<sup>558</sup>
- wilfully obstruct or delay a police officer from entering or re-entering premises<sup>559</sup>
- give alarm for the purpose of either notifying another person of the presence of police, or delaying police entry.<sup>560</sup>

It is also an offence under the Drug Premises Act for a person to fail to give their name and address to police, and the maximum penalty for this offence is a fine of \$5500.

A small number of charges were laid for each of the above offences over the review period, as the table below indicates.

<sup>558</sup> *Police Powers (Drug Premises) Act*, s. 9(1)(a).

<sup>559</sup> *Police Powers (Drug Premises) Act*, s. 9(1)(b).

<sup>560</sup> *Police Powers (Drug Premises) Act*, s. 9(1)(c).



**Table 12. Number of charges for various other offences**

Drug Premises Act Offence	Number of Charges laid
Wilfully prevent a police officer from entering or re-entering premises <sup>561</sup>	0
Wilfully obstruct or delay a police officer from entering or re-entering premises <sup>562</sup>	6
Give alarm for the purpose of either notifying another person of the presence of police, or delaying police entry <sup>563</sup>	2
Fail to provide, without a reasonable excuse, full name and address to police <sup>564</sup>	0

Source: COPS database

## 6.9. Conclusion

It is not the role of this review to make policy recommendations about the appropriateness of the reverse onus of proof – that is a matter for Parliament. We acknowledge the strong competing policy interests on this issue, and the practical implications for placing an onus on the defendant in criminal proceedings.

We note that where defendants pleaded not guilty to the reverse onus offences, the offences were proven in less than one-third of cases for section 12 offences, and not at all for section 14 offences. It is important to note that in relation to these offences, we only have information about a small number of pleas and court outcomes.

However, a particular matter is the application of the section 12 offence to residential premises. Our research findings suggest that the statutory defence for being found on entering or leaving drug premises, of having a lawful purpose or lawful excuse to be on the premises, does not adequately reflect the type of defence which it appears that Parliament was attempting to create when it passed the legislation.

This difficulty is illustrated by cases where defendants have relied on matters such as their entitlement to be on the premises as a result of a lease, to establish that they had a lawful excuse to be on the premises. These matters are highlighted by the discussion above about dual purpose on residential premises above. In such cases, the courts have had to grapple with the issue of whether this in itself was sufficient to constitute a defence under the legislation. Courts have also considered whether other matters, such as the suspicions or knowledge of the defendant as to the use of the premises as drug premises, were sufficient to show that the defendant did not have a lawful excuse or purpose.

In practice, it appears that the courts have been concerned to determine whether the defendant had knowledge of the use of the premises as drug premises. In short, the real issue appears to have been the question of knowledge, rather than the legality of the person's presence on the premises. Given the difficulties in this area, it appears to us that the defence of lawful purpose or lawful excuse may not adequately reflect Parliament's intentions in this area. Consideration should be given to the amendment of this statutory defence to better reflect the circumstances and/or state of mind which a person must prove to make out an adequate defence.

We note that in this respect, the offence under section 14 of organising, conducting, or assisting in organising or conducting drug premises requires the defendant to prove that they did not know, or could not reasonably have been expected to have known that the premises were drug premises. This defence means in effect that even if a person did not consciously recognise that the premises were drug premises, they are liable to conviction if they were negligent in not having that recognition. This defence is clearly centred on the question of knowledge. It may be that Parliament considers that this defence focuses on the real issues involved. Clearly, the nature of the defence that Parliament wishes to create for being found on, entering or leaving drug premises needs to be the subject of further consideration.

In the case of allowing premises to be used as drug premises, Parliament has created an offence where the prosecution must establish beyond reasonable doubt a positive state of knowledge on the part of the defendant. In those circumstances, it is not surprising that the prosecution has sometimes found it difficult to establish the requisite standard of knowledge needed to establish the offence.

<sup>561</sup> *Police Powers (Drug Premises) Act*, s. 9(1)(a).

<sup>562</sup> *Police Powers (Drug Premises) Act*, s. 9(1)(b).

<sup>563</sup> *Police Powers (Drug Premises) Act*, s. 9(1)(c).

<sup>564</sup> *Police Powers (Drug Premises) Act*, s. 9(2).

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Finally, it is clear that the Drug Premises Act has had an impact on young people and Aboriginal and Torres Strait Islanders. As we discuss in the following chapter, the Act has also had a clear impact on persons of Asian background in Cabramatta. However, our review of the operation of the Act has not indicated any inappropriate targeting of persons by police.

## **6.10. Recommendation**

**That consideration be given to the amendment of the statutory defence in section 12 of the Act, to better reflect the circumstances and/or state of mind which a person must prove to make out an adequate defence for being found on, entering or leaving drug premises.**

NSW Police has advised us that it supports this recommendation.

# Chapter 7. Cabramatta

## 7.1. Introduction

The impetus for the introduction of the Drug Premises Act was to assist police in dealing with drug premises in Cabramatta. In this section of the report, we examine the extent to which the Act has enabled police to do this.

Some of the concerns that were raised about the Act in Parliament and other forums specifically related to the possible impact of the law in Cabramatta. One concern was that the use of the Act in Cabramatta would cause the displacement of the drug trade into surrounding areas, and that the drug trade will become more organised and professional in response to the new policing initiatives. Another concern was that young people who are involved in drug premises would be targeted under the Act. Our research findings on these issues will be discussed in this chapter.

We will also examine:

- the emergence of drug premises in Cabramatta
- how the Drug Premises Act has been implemented
- the use of the Act upon fortified, non-domestic drug premises, and other types of premises
- demographic information, including the age, gender and ethnicity of people who were charged on drug premises in Cabramatta and
- evidence relating to the impact that the Drug Premises Act has had on the illicit drug trade in Cabramatta, and the question as to whether the drug trade has been displaced to other areas and
- perspectives on the impact of the legislation, including the views of local health professionals, police and community leaders.

## 7.2. Background

### 7.2.1. A brief history of the emergence of drug premises in Cabramatta

In the late 1990s, it was claimed that significant numbers of drug premises or drug houses burgeoned in the low-rise unit blocks in the streets bordering the Cabramatta CBD. One senior police officer estimated that in late 2000 there were up to forty or fifty drug premises in the Cabramatta area.<sup>565</sup> Particular streets were known by police for the prevalence of drug premises, scattered in amongst residential units and houses.

Transactions that had previously taken place in public places, such as street corners and shopping malls, moved to the more private settings provided by flats and houses in the area. For police, the first indicator of this phenomenon had been their observations of processions of people heading from the railway station or the CBD to residential areas adjoining the Cabramatta CBD. They referred to this procession as the ant trail. One senior officer described the journey that was taken from the railway station to drug premises in the following way:

*They were so blatant, the users would get off the train, predominantly, or from the CBD, and basically talk to someone on the street, "Do you know where I can get on?" They'd say, "Go up to [street name], which was a huge area that we were operating in, [street name] was a main thoroughfare for drug premises and you'd watch the ant trail, they'd all walk up, and they'd pass the information on, it continued on and on and on."<sup>566</sup>*

In a focus group we conducted, police officers from Cabramatta LAC told us that intermediaries often escorted drug purchasers to drug premises from the CBD, or specific locations known for drug supply such as the Railway Station.<sup>567</sup> One police officer described how this practice fitted into the economy of the illicit drug trade:

*When drug houses were rampant ... there would be people, spruikers down the Railway Station and then, he would say, "Yeah, I can help you get on", and he'd wait until he had five, and then he'd take them for walk to the drug house, and ... he'd get his bonus fifty dollar deal for the five customers."<sup>568</sup>*

<sup>565</sup> Interview, former crime manager, Cabramatta LAC, 21 August 2003.

<sup>566</sup> Ibid.

<sup>567</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>568</sup> Ibid.

## 7.2.2. Characteristics of drug premises in Cabramatta in the late 1990s

According to police, drug premises could often be distinguished from other units and houses by the presence of overt, heavy security. A former Cabramatta Crime Manager noted that the doors of these premises were the significant feature:

*They were very, very heavy steel, you couldn't lift them up, not like normal security grills that you get on your front door, even the best made product ... they were heavily gauged steel... the mesh was such that it was one way ... you couldn't see in but you could see out. They often had three to four actual bolts drilled in to the cement rendering around the unit doors, usually three to four.<sup>569</sup>*

According to police, these premises presented particular difficulties in drug investigations. One difficulty is being able to identify who is conducting drug transactions from the premises when it is not possible to see the person engaging in the transaction. A common strategy in drug investigations is to conduct controlled buys from premises to get evidence that drug supply is taking place. This involves undercover police attending premises to purchase drugs.<sup>570</sup> At the LAC level, these drug purchases may involve several buys on different occasions of foils or caps of heroin for about fifty dollars each. The following extract from a COPS event narrative is an example of a controlled buy in which the problem outlined above arose:

*The operative knocked on the door of the unit. A male person from within the unit then spoke to the operative through a closed timber door. As a result of the conversation between the operative and the male person, the operative passed a pre-recorded \$50 note under the door to the unit. A small plastic resealable bag containing an off white powder substance was then passed from within the unit, under the timber door to the operative. Police will allege that the off white powder is a prohibited drug, cocaine. At no time was the operative able to view the male person who supplied the prohibited drug, for identification purposes.<sup>571</sup>*

In situations like this, because police are unable to see who is conducting the drug transaction, they are unable to gather sufficient evidence against a person to lay a charge of drug supply.

For police, another difficulty posed by fortified premises is the disposal of illicit drugs before police enter the premises. Police Rescue are often called upon when search warrant teams require assistance to gain entry to premises. They may be required to cut through metal doors or bars before the search warrant team can enter. Police have told us that in such instances, prior to the commencement of the Drug Premises Act, they often found evidence of drug supply, but were unable to lay charges against the occupants of the premises because no actual drugs were located. As a former Crime Manager from Cabramatta LAC noted:

*We'd execute the search warrant, and yes we'd use rescue squad, we'd tear doors off, and we'd get into the premises and we'd find anything up to seven or eight people, empty house, paraphernalia, money but no drugs. So often at the end of the day we'd walk away with a door, and not much else.<sup>572</sup>*

## 7.2.3. Objectives of the Drug Premises Act in Cabramatta

One of the main objectives of the drug premises legislation was to enable police to lay charges in instances such as those above, against people found on premises at which drug related activity was taking place, but where no drugs were found. In the course of our review, a number of police identified the fact that police could now lay charges in these situations as a key strength of the legislation. Our research findings suggest that the Drug Premises Act has enabled police to lay charges against people on premises in Cabramatta where police have been previously unable to do so.

## 7.3. Frequency of the use of the Act in Cabramatta

In Cabramatta, the Act was used on 34 premises and three vehicles during the review period.<sup>573</sup> The frequency of the use of the Act in Cabramatta was high compared with other parts of the state. The Greater Metropolitan Region as a whole, which includes Cabramatta, used the Drug Premises Act far more often than other regions. The graph below shows the number of times the Act was used in Cabramatta, in the Greater Metropolitan Region (excluding Cabramatta), in all other regional commands, and by the State Crime Command.

<sup>569</sup> Interview, former crime manager, Cabramatta LAC, 21 August 2003.

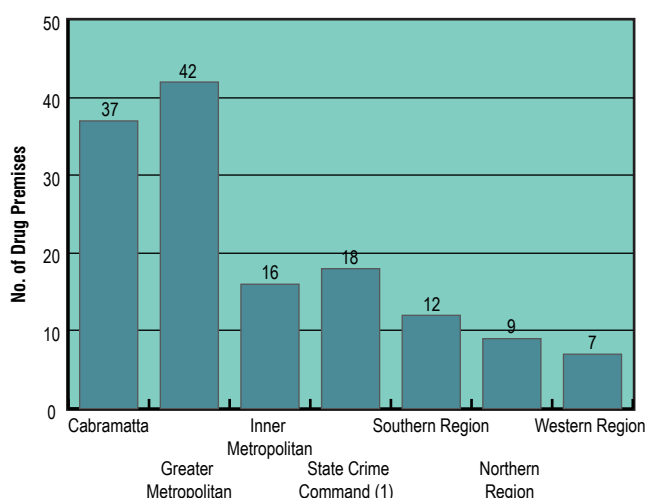
<sup>570</sup> These "controlled buys" are conducted under the authority of the *Law Enforcement (Controlled Operations) Act 1997*.

<sup>571</sup> COPS event narrative, Cabramatta LAC, Drug Premises Incident 4.

<sup>572</sup> Interview, former crime manager, Cabramatta LAC, 21 August 2003.

<sup>573</sup> These figures include uses of the Act by both the Cabramatta LAC A and by the Greater Hume TAG. In the first year, drug premises charges were laid in connection with 22 premises and two cars, in the second year, charges were laid in connection with 12 premises and two cars.

**Figure 14: Numbers of identified drug premises Cabramatta LAC, NSW Police Regions and State Crime Command, 1 July 2001- 30 June 2003**



**Number of Identified Drug Premises in Cabramatta LAC, and in Other Region Commands**

Source: COPS event narratives. (1) Included in the State Crime Command figure is one incident in which Special Crime and Internal Affairs (SCIA) used the Drug Premises Act

### 7.3.1. Charges laid under the Drug Premises Act in Cabramatta

Police in Cabramatta also laid a high proportion of the charges that were laid under the Drug Premises Act across the state. Over the review period, 81 of the 220 of the charges State-wide for the offence of being found on, entering or leaving drug premises were laid in Cabramatta. In addition, 22 of the 108 charges for the offence of allow premises to be used as a drug premises, and 13 of the 66 charges for organise, conduct or assist in organising or conducting drug premises were laid in Cabramatta. A total of 118 people were charged under the Drug Premises Act in Cabramatta during the review period. Data on the demographic characteristics of people who were charged is set out later in this chapter.

In addition, on some occasions when police used the Drug Premises Act in Cabramatta, they also laid charges under the Drug Misuse and Trafficking Act against people found on drug premises for various drug offences. Police laid 52 charges for supply offences, and 25 charges for possession of a prohibited drug, against people who were found on drug premises in the area.

Of the 118 people charged under the Drug Premises Act in Cabramatta during the review period, half of those, 59, were charged solely with a drug premises offence, and not with offences under the Drug Misuse and Trafficking Act, such as possession or supply. While drugs were found in 70% of the incidents in which the Act was used in Cabramatta, in some of these instances, police

were unable to lay charges for drug offences like supply. Therefore, the Act has enabled police to lay drug premises charges in instances where they have been unable to lay charges for other drug offences.

### 7.3.2. Applying for drug premises search warrants

In the following section, an overview of how police used the Act in Cabramatta will be provided, outlining sources of information on drug premises, and the process of applying for drug premises search warrants.

### 7.3.3. Intelligence on drug premises

Intelligence was gathered about drug premises in Cabramatta from a variety of sources including police on patrol, community sources, surveillance of premises and covert operations.

A common community source of information on drug premises has been neighbours making complaints to police. One senior officer we interviewed described the community as very forthcoming in providing information to police about drug premises.<sup>574</sup> In the following excerpt from a court case in which charges under the Drug Premises Act were heard, a police officer was asked to describe the sources of the information police had on one particular drug premises:

A: Well it was based on intelligence reports that we had at Cabramatta, intelligence holdings that's from people ringing the police station to complain about the activities of the house.

Q: For example?

A.: That there's drug dealing from the house. My next door- the person across the road is dealing drugs, a person up the road is dealing drugs, that sort of stuff. Checks on the people that were believed to live there, which was [person's name], looking at his criminal history and just general observations.<sup>575</sup>

According to Cabramatta police who we spoke to about the Act, addicts and offenders also provided another source of information about the location of drug premises.<sup>576</sup> For example, when police are conducting surveillance on a house, drug users who attend the premises may be questioned by police after they have left.

Another method used by police in Cabramatta to establish the location of drug premises was what police have called the ant trail, referred to above. Police would observe drug users as they set out from the railway or other parts of the suburb and follow them to drug houses. One detective recalled that

<sup>574</sup> Interview, former crime manager, Cabramatta LAC, 21 August 2003.

<sup>575</sup> Liverpool Local Court, *Police v. Tula Ong, Nhep Siv and Simean Sim*, 11 June 2003, p. 13.

<sup>576</sup> Focus group, Cabramatta police, 2 July 2003.

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in 2001 “there was that many junkies around, literally, they would go in groups of ten to a unit”.<sup>577</sup> In the following excerpt from an event narrative, one officer documents how police followed several people to a drug house, and then created an intelligence report about the incident:

*On Wednesday the [date], police followed two known drug dealers (Asian males) from the [name] Service Station, on [street name, suburb]. Also present with the two Asian males was a Caucasian male. All persons walked in a Westerly direction along [street name]. Police followed them and saw the persons enter the driveway of [address]. Police conducted surveillance for a period of time. At this time police saw the Caucasian male wait in the driveway of the premises while the two asian males were out of sight. Asian males have approached the Caucasian male who was still standing in the driveway of the unit block and police saw the three persons have a conversation. A short time later police observed all three persons walk a short distance away from the premises, and police have then seen one Asian male hand something to the Caucasian male. Upon arrival back at Cabramatta Police Station, an Intelligence report was created.*<sup>578</sup>

Police continued to conduct surveillance on this premises over the following two weeks. They then applied for, and were granted a drug premises search warrant. This incident is “Case Study 3” in this chapter.

Cabramatta LAC used a database to record the details about drug premises. A former Crime Manager from Cabramatta described how this fitted into the command’s strategy for policing drug premises:

*As information would come in, “I have a drug premises next to me”, or “I have people selling drugs next to me”, we would start that on a database, and we would start to build up the profile of that premises, and we’d set a criteria, that when that premises had enough information to support a search warrant we would eliminate that, and so on and move down... Field intelligence would go out, we would investigate that is or is not a drug premises.*<sup>579</sup>

Once police had received information about a suspected drug premises, they would seek to investigate it further to establish if the claims about the premises had some basis. When asked how police prioritised which premises to target, one detective said:

*If you’ve got a community saying “We’ve got a problem here”, and then we look at it, and there’s some intelligence on that premises of drug supply, obviously our chances of conviction are going to be much greater, so we would prioritise that one.*<sup>580</sup>

According to one detective, there were so many drug premises in Cabramatta in July 2001 when the Act came in to operation, police would say, “we’ll do this one afternoon, and we’ll do that one tomorrow morning, there was just so many”.<sup>581</sup>

Covert operations, in which undercover police purchase drugs from premises, were sometimes used to get evidence that drug supply was taking place at a premises. In 14 instances in which police used the Act in Cabramatta, police noted in event narratives that they had conducted undercover drug buys from the premises. In other instances, police would put the premises under surveillance, sometimes for several days, or they would conduct intermittent random surveillance over a period of a few weeks or months.

In relation to all but a couple of occasions in which the Drug Premise Act was used in Cabramatta, police had prior intelligence on the premises, either from community sources, police observations or prior drug related intelligence on the occupants or premises. However, one particular matter, in which police went to a house to investigate a shooting incident and discovered a large quantity of heroin, was markedly different in this regard. This incident is discussed in “Case Study 4”.

In the table below, we have quantified the number of times particular sources and types of information about drug premises in Cabramatta were noted by police in event narratives. As we have noted in our chapter on “Methodology”, event narratives are free text fields, and police are not required to note any particular aspect of their use of the Act. This table therefore only provides an indication of the types of information police had, and is unlikely to represent an exhaustive list of the sources police relied upon in relation to suspected drug premises.

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<sup>577</sup> Ibid.

<sup>578</sup> COPS event narrative, Cabramatta LAC, Drug Premises Incident 1.

<sup>579</sup> Interview, former crime manager, Cabramatta LAC, 21 August 2003.

<sup>580</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>581</sup> Ibid.

**Table 13. Information about drug premises in Cabramatta**

Source of information on drug premises	Number of times police note each source
Controlled buys	14
Drug users near the premises	11
Police surveillance	10
Prior intelligence on premises	9
People coming to and going from premises	8
Information from the community	8
Occupant known to police for drug offences	4
Previous drug related search warrant executed	3

**Source:** COPS event narratives. In relation to any one premises, several types of drug supply activity were usually noted. Consequently, the number of reasons is greater than the number of instances (37) in which the Act was used.

#### 7.3.4. Applying for drug premises search warrants

Once police had enough evidence that a house or flat may be a drug premises, they would then apply for a search warrant. As we discuss more fully in the chapter, “Drug premises search warrants”, a police officer can apply for a search warrant under the Drug Premises Act if they have reasonable grounds to believe that the premises is being used for the supply or manufacture of prohibited drugs.<sup>582</sup>

Of the 14 drug premises search warrant applications made over the first year of the use of the Act, Cabramatta police only provided us with three drug premises search warrant applications, and none were provided by the Greater Hume TAG who also used the Act in the area. The details of two of these applications are set out below. The third search warrant application relates to the use of the Drug Premises Act that is described in Case Study 3.

#### 7.3.5. Cabramatta drug premises search warrant application 1

This application contained the following information:

In late 2000, plain clothes police saw an Asian male sitting on the floor of the unit counting a large quantity of cash. They secured the scene and applied for a Part 2 search warrant. No drugs were found during the search, but \$5,000 cash and stolen property were seized by police.

Early the following year, four separate charges of possession were laid against people linked to that address. Police executed another Part 2 search warrant in May. At this time, “Police were satisfied the premises was a drug house, however no drugs were recovered.”<sup>583</sup>

Two months later, bike police were patrolling near the block of flats. A resident approached them and told them that people were dealing from the flat. The application states:

*Police approached the front door and rang the buzzer to unit [number]. An Asian male answered and said, “How much do you want?” A short time later, an Asian male approached the side window and saw the two uniformed police. The Asian left and a short time later police left the premises.*<sup>584</sup>

Police went to the unit block to conduct surveillance a week later. In the course of their surveillance, police spoke to three drug users who said they had bought heroin from the unit. Police also saw a number of persons approach the stairwell door of the unit block, and attempt to purchase drugs. One of these people asked the police who were conducting the covert surveillance, “Are they still running?”<sup>585</sup> He was later arrested for other drug related matters. During their surveillance of the unit, police also noticed that the front door of the unit was “a reinforced heavily fortified steel door”.<sup>586</sup> Behind it, there was a timber door with a “large metal bar that lies horizontally across the middle”.<sup>587</sup>

<sup>582</sup> *Police Powers (Drug Premises) Act*, s. 5 (1).

<sup>583</sup> Search warrant application 1, Cabramatta LAC, Drug Premises Incident 6.

<sup>584</sup> *Ibid.*

<sup>585</sup> *Ibid.*

<sup>586</sup> *Ibid.*

<sup>587</sup> *Ibid.*

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Two days later, police were again conducting surveillance on the unit. They saw a female, described as a regular drug user, approach the main door of the units, squat down, and then wait. She then sat down close to the police vehicle, prepared what appeared to be drugs and injected herself in the left arm.

The next day, police returned to the unit in a surveillance van. From the van, they filmed about twenty people “who appeared to be drug users go to the main door of the unit block and buzz the intercom. Police then saw them squat down and place money under the door:

*Once this is done an Asian male appears at the side window of the top floor, which is the common window shared by the top floor. The Asian male appears to have a conversation with the persons at the bottom of the door and then walks down to where the money is placed and then walks to the middle window and throw a foil(s) down to the people waiting at the bottom. This is the process observed for every buy during the time.<sup>588</sup>*

That day, police spoke to the residents of a nearby unit to determine if the drug supply was taking place from their premises. Police discovered that these residents were elderly upstanding citizens and concluded that the other unit on the top floor was “responsible for the vast amount of drug activity”.<sup>589</sup> Police then conducted a “habitation check”<sup>590</sup> on the occupant of the top floor unit, looked him up on the COPS database and found that he was not known to police.<sup>591</sup>

On the basis of the information outlined above, the drug premises search warrant was granted.

### 7.3.6. Cabramatta drug premises search warrant application 2

In this search warrant application, less background outlining the source of police suspicions relating to the premises was provided.

The application begins with the statement that surveillance was conducted on the premises over three consecutive days, enabling police to establish who lived there. Police had intelligence about the female occupant of the premises, relating to drug dealing at a previous address. Police ascertained that this woman had previously been charged with several possession and supply offences, some dating back to 1997.

Police then made inquiries with community sources and found out when the woman had moved in. This information, police noted, “corresponds with the time that police started receiving complaints about drugs being sold from the premises”.<sup>592</sup>

The application notes that police had seven intelligence reports from community sources and police regarding drug dealing at the premises. Most of these related to “people and cars frequenting the premises for short periods of time ... A number of the cars attending the premises had intelligence for drug use”.<sup>593</sup>

The application goes on to describe a series of incidents that took place near the house several days before the application for the search warrant was made. Police saw a man leave the house and followed him. He was then seen placing a small balloon in his mouth, which he swallowed. The man was charged with hindering police<sup>594</sup> and he provided a statement saying that he had gone to the house to purchase drugs. Additional surveillance was conducted that day, and an officer saw more vehicles and persons coming and going after only staying for a short period of time. That afternoon, one of these people was spoken to by police after the person left the house, and was “observed to have a fresh track mark on his arm and appeared to be affected by drugs”. About an hour later, another man arrived at the house, and left soon after. He was stopped and searched by police and was found in possession of twelve silver foils of cocaine. He admitted that he had just bought them for \$600 from an Asian woman.

Several days later, police applied for, and were granted, a drug premises warrant to search the premises.

## 7.4. The nature of drug premises targeted by the Act in Cabramatta

### 7.4.1. Introduction

Over the review period, the Drug Premises Act was used on different types of drug premises in Cabramatta. These included fortified non-domestic drug premises, fortified drug premises that were used for domestic purposes, premises that were used for domestic purposes that did not have fortifications, and cars.

A key impetus for the introduction of the Act, as noted above, was to enable police to deal more effectively with fortified drug premises. In parliamentary debate on the Act, the Attorney General explained the type of premises the legislation was intended to target:

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<sup>588</sup> Ibid.

<sup>589</sup> Ibid.

<sup>590</sup> A “habitation check” is conducted by police to ascertain the identity of people who live at particular premises.

<sup>591</sup> Search warrant application 1, Cabramatta LAC, Drug Premises Incident 6.

<sup>592</sup> Search warrant application 3, Cabramatta LAC, Drug Premises Incident 24.

<sup>593</sup> Ibid.

<sup>594</sup> He may have been charged with hindering police because he swallowed the balloon.



*It should be clear that this legislation actually describes the sorts of premises that we are talking about. We are not talking about normal domestic residences with a flyscreen door, we are talking about fortified premises... [the legislation] is designed to catch sophisticated criminals who have been taking advantage of the inability of the police to effectively deal with a matter at the forensic evidence level.<sup>595</sup>*

One way to assess how the Act has been implemented is to examine the extent to which the type of premises involved in uses of the legislation in Cabramatta resemble those the Act was intended to target.

Police documents suggest that about half, or 17, of the flats and houses in Cabramatta at which police took action under the Act fit key indicia described in the parliamentary debate on the legislation. According to the descriptions provided by police, these premises were either fortified, non-domestic, or both. Eight of the 32 premises did not appear to be used for domestic purposes.

For this part of our report, we examined police documents relating to uses of the Act in Cabramatta to investigate the nature of the premises at which the Act was used. We have quantified the number of times police noted the following characteristics of particular premises:

- the presence of security measures and
- the premises were unfurnished, or there was minimal evidence of domestic life at the premises.

Our ability to assess the types of premises at which the Act was implemented is dependent upon the information about the premises police have provided. As we have noted previously in this chapter, police are not required to record any particular aspect of their use of the legislation, such as a description of the premises, in the free text event narrative field. Notwithstanding the limitations inherent in this data, a number of features of our analysis of this data were supported by independent information sources, such as interviews with police and health professionals who work in Cabramatta.

It is also important to acknowledge that our assessment of the type of premises is largely based on descriptions written by police, and in most cases, it has not been possible to triangulate this data. For example, most court proceedings examined for this review have not involved a discussion of the nature of the premises. In addition, we have only been able to review a small number of search warrant videos.

The value of multiple information sources is illustrated by case study 1. This case relates to the implementation of the Act at fortified non-domestic premises. In this instance, the nature of the premises was discussed in the court proceedings. In the event narrative, the door on the premises was described as a "heavily fortified with a heavy metal door".<sup>596</sup> However, it emerged at court that the door on the premises was the same as the door on the flat next door, and a police witness conceded that the security on the premises was not unusual for the area.<sup>597</sup> While this particular premises was proved beyond reasonable doubt to be a drug premises, this case study exemplifies some of the concerns raised in parliamentary debate on the Act about establishing what constitutes normal levels of security in an area.<sup>598</sup>

## 7.4.2. Non-domestic drug premises in Cabramatta

Of the 34 premises in Cabramatta at which the Act was used over the review period, eight involved premises that were described by police as non-domestic, and five of these eight premises also had some security measures.<sup>599</sup>

These premises were variously described as unfurnished, "not ... a normal place of residence"<sup>600</sup> and "very sparsely furnished".<sup>601</sup> Police noted that three of the eight non-domestic drug premises had no food in the kitchen. Two of these premises did not have a fridge. One of the eight non-domestic drug premises was described in an event narrative in the following way:

*The premises was barely furnished with only the bare essentials. Only one room within the premises contained a bed. None of the wardrobes within the premises contained clothing. The remainder of the premises were littered with rubbish.<sup>602</sup>*

Another premises had no furnishings other than a television, a video and a mat on the floor.

Security measures were noted by police in respect of five of the eight non-domestic drug premises. The type of security ranged from deadlocks and a chain lock, to a wire cage enclosing a balcony. Another premises had a metal plate fixed near a door lock that police alleged was an attempt to strengthen the security of the door.

<sup>595</sup> The Hon. R. Debus, NSWPD, 6 June 2001, p. 14565.

<sup>596</sup> COPS event narrative, Cabramatta LAC, Drug Premises Incident 3.

<sup>597</sup> Liverpool Local Court, *Police v Dang Nguyen*, 4 December 2001.

<sup>598</sup> These concerns are discussed in section on "fortifications" in the Chapter, "The Definition of Drug Premises".

<sup>599</sup> COPS event narratives, Cabramatta LAC, Drug Premises Incidents 3, 4, 5, 7, 9, 13, 10 and 19.

<sup>600</sup> COPS event narrative, Cabramatta LAC, Drug Premises Incident 4.

<sup>601</sup> COPS event narratives, Cabramatta LAC, Drug Premises Incident 7.

<sup>602</sup> COPS event narrative, Cabramatta LAC, Drug Premises Incident 10.

On six of these premises, police also found items associated with drug supply. These included items commonly used for wrapping and cutting powder drugs. Police also found scales on one premises, and documents that they believed were associated with drug supply on another. Syringes were located on seven of the eight non-domestic drug premises.<sup>603</sup> Quantities of money were found on four separate premises. These quantities ranged from \$190 to \$2,360.

While it is not necessary for police to find drugs for premises to be considered to be drug premises, prohibited drugs were found on six of the eight premises. The quantities of drugs found ranged from 0.06 to 73 grams of heroin.

At court, it was proved beyond reasonable doubt that all of these eight premises were drug premises.

## Case study 19.

### Non-domestic fortified drug premises in Cabramatta

Several weeks after the Act came into operation, plain-clothes police attended a unit in Cabramatta, acting on intelligence reports that had been received in relation to the premises. Police conducted surveillance, and also approached several drug users they had seen approach the premises who admitted having purchased cocaine from the unit.

Police applied for, and were granted, a drug premises search warrant.

The ground floor balcony of the unit was enclosed by a metal cage covered with heavy mesh. There were two doors at the entrance, an external one made of heavy metal, with a timber door behind it. According to the event narrative, police found the following items inside the unit:

*... a number of items related to the intravenous use of prohibited drugs. These included syringes, wrappings, swabs, smoking pipe and razor blades. They also located documents with figures believed to relate to drug transactions.*<sup>604</sup>

The documents found included a book that appeared to be a ledger with phone numbers, records of names and amounts of money owing. Police also found an envelope with figures written down it and a page from an exercise book with figures down one side, and a lot of writing in a foreign language down the other.<sup>605</sup> When questioned during the court proceedings, a police witness said: "in my experience, I've seen figures like this on a number of occasions ... indicating a ledger to do with the supply of prohibited drugs."<sup>606</sup> No drugs or cash were located during the search.

The unit was unfurnished, except for a single mattress in one of the bedrooms. There was no fridge and minor to nil kitchenware. Most of the cupboards were bare. Police concluded that the unit could "not be described as a normal residential home".<sup>607</sup>

Two men were charged with being found on drug premises: the young man who opened the door, and another man in his forties. A third man found on the premises, the occupier, was also charged with allowing his premises to be used as a drug premises. Both of those charged with being found on a drug premises were convicted and sentenced to twelve months imprisonment, subsequently appealed, and each had their sentences reduced to four months. Charges against the occupant of the unit of allowing his premises to be used as a drug premises were dismissed. This court case is discussed in detail in the chapter, "Offences in the Drug Premises Act".

## Case study 20.

### Non-domestic fortified drug premises in Cabramatta

Police executed another search warrant on a similar type of premises. When officers attempted to enter the unit, they found that a chair had been wedged behind the door. There was also a metal plate near the door lock that police alleged was an attempt to secure and strengthen the entrance door.

When police entered the unit, they found a number of items relating to the intravenous use of prohibited drugs, including used syringes, swabs and spoons. They also found a meat cleaver and a knife on a metal rod near the front entrance, and a set of scales, packets of balloons, and aluminium foil. In the event narrative, the premises was described in the following way:

<sup>603</sup> See *Police Powers (Drug Premises) Act*, s. 11 (d).

<sup>604</sup> COPS event narrative, Cabramatta LAC, Drug Premises Incident 3.

<sup>605</sup> Liverpool Local Court, *Police v Dang Nguyen*, 4 December 2001.

<sup>606</sup> *Ibid.*, p.9.

<sup>607</sup> COPS event narrative, Cabramatta LAC, Drug Premises Incident 3.

*The unit was in disarray, with sparse furnishings. There was little food located within the refrigerator/kitchen cupboards. The unit could not be described as a normal place of residence.<sup>608</sup>*

There was also evidence that drugs had been destroyed just prior to police entry to the unit. When police went into the bathroom, they saw the following:

*The grate to the shower waste was broken and the walls and floor of the shower were wet. An inspection of the shower waste police located a number of plastic bags, similar to plastic bags located in one of the bedrooms. A closer inspection of the drain pipe, police located a plastic bag containing a quantity of an off white powder. Police will allege that this white powder is a prohibited drug, cocaine. At the water level inside the drain, police observed two small balloons and a pen which could not be retrieved.<sup>609</sup>*

Police also found property that they suspected had been stolen, including mobile phones, watches, and a power tool. Both occupants, who were Asian males in their twenties, were charged with being found on drug premises. Both were convicted, and received custodial sentences of three and six months.

### 7.4.3. Domestic drug premises with fortifications

Of the 34 premises upon which the Act was used over the review period, including domestic and non-domestic drug premises, security measures were noted in respect of 15 premises. Ten of these were domestic residences.

The type of security measures noted by police on the ten domestic drug premises included:

- a fortified door, and an interior timber door, with a large metal bar across the middle
- a metal security door, and an interior timber door that was blocked off by furniture
- two deadlocks and two chains
- a security screen door with a hole cut in it - police alleged drug transactions were conducted through the hole
- a heavily fortified premises with cream steel mesh on the front door and metal bars on the windows
- the premises were fortified (no further details provided)
- the window and front door were heavily fortified with steel bars
- white steel bars on all windows and doors
- a screen mesh front door with a solid wooden door behind it, windows fortified with steel bars and
- the premises were fortified with a large metal fence with an electronic gate, and there was a secure area at the rear of the house with security bars surrounding it.<sup>610</sup>

### 7.4.4. Changes in the types of drug premises over the review period

Eight of the 22<sup>611</sup> drug premises identified in the first year of the Act, about 36%, were described as non-domestic. None in the second year were described as non-domestic. While 11 of the 22 premises in the first year were described as fortified, just four in the second year of the use of the Act were described in this way.

This suggests that the type of drug premises upon which the Act was used in Cabramatta changed over the review period. Police we spoke to also considered that this was the case. One Cabramatta detective commented in July 2003:

*Now there is a tendency for them [drug premises] to be more domestic. In the first year, all the steel doors, they had a mattress and that was it, now they are actually living in them.<sup>612</sup>*

In parliamentary debate on the Act, and other forums, including submissions received to our discussion paper, concerns were expressed about the application of the Drug Premises Act to premises used for a dual purpose. For instance, while raising concerns about the ability of a person found on drug premises to prove that they were there for a lawful purpose, one member of the Legislative Council said:

<sup>608</sup> COPS event narrative, Cabramatta LAC, Drug Premises Incident 4.

<sup>609</sup> Ibid.

<sup>610</sup> COPS event narratives, Cabramatta LAC.

<sup>611</sup> The Drug Premises Act was used on 24 occasions in Cabramatta in the first year that the Act was in operation, from 1 July 2001 to 30 June 2002, but two of these uses were on cars.

<sup>612</sup> Focus group, Cabramatta Police, 2 July 2003.

*A real problem will arise with regard to premises that are used for more than one purpose. A house may be a secure house that is used for the supply or manufacture of a drug; it may also be a shared house or a family home whereby some or all of the residents may be completely unaware that drug supply and manufacture is going on. For instance, the residents may work set hours and the supplying and manufacturing may occur when no-one but the person committing the offences is in the house.<sup>613</sup>*

Our research indicates that the Act was almost always used at domestic premises, in Cabramatta and elsewhere in the state, though in Cabramatta, non-domestic drug premises were more prevalent than in other LACs in NSW. The case study below illustrates the use of the Act on premises used for domestic purposes. This was the first time police used the Act in Cabramatta.

## Case study 21.

### Drug premises used for domestic purposes

Police began to conduct random surveillance on a house in Cabramatta. Over a few weeks, they saw a number of people come and go, and stay for a short period of time.

One of the occupants of the house was a convicted heroin supplier and a drug user. Police had also seen drug paraphernalia scattered throughout the backyard.

A drug premises search warrant application was prepared that detailed the surveillance police had conducted at the premises. Police also noted that they had several intelligence reports in relation to the convicted heroin supplier who lived in the unit. The search warrant was granted.

When they arrived at the premises to execute the search warrant, police found a three year old child, the child's father and grandmother, and three Asian men in their late 20s and early 30s. The house was furnished, and children's toys were scattered on the floor in almost every room. The child's grandmother lived in one room, but the child was visiting the house with his father.

The search warrant video shows evidence of drug use in most rooms of the house.<sup>614</sup> Police found a spoon with drug residue in it on the kitchen bench and a discarded syringe in the laundry basin. There were also numerous syringes in various rooms in the house. One officer said that he had "never seen so many uncapped syringes in the one place".<sup>615</sup>

As police entered the house, one of the young men occupant A ran towards the back of the house, dropped a plastic bag with five balloon packages in it and threw an uncapped syringe into the laundry sink. When police caught up to him, they noticed a foil in his mouth and attempted, without success, to prevent him from swallowing it. Another of the young men, occupant B, immediately ran upstairs when police entered, was chased by police, and jumped out the window of the top floor bedroom. He complained of back pain and was taken to a nearby hospital.<sup>616</sup>

Police did not find any items associated with drug supply, as opposed to drug use. Police found one balloon of cocaine, weighing 0.42 grams, a further 0.10 grams of cocaine, and four balloons of heroin, weighing 0.79 grams in total, that were found near the occupant police had chased through the house. In addition, police found \$2,839 on one person, and \$1,645 on another.

All four young men, including the child's father, were charged with being found on, entering or leaving drug premises. The Department of Community Services was notified about the child who was considered to be a young person at risk. The grandmother was not charged. Occupant A was convicted of being found on drug premises and sentenced to 12 months imprisonment. Occupant B was also convicted of this offence and received a 12 month bond. The child's father received a 12 month bond, and other young man who was charged with being found on drug premises was sentenced to six months imprisonment.

We note here our discussion and recommendations in Chapter 6 about the application of the Act in relation to dual purpose premises.

<sup>613</sup> The Hon. Ian Cohen, NSWPD, 7 June 2001, p. 14636.

<sup>614</sup> Search Warrant Video, Cabramatta LAC, Drug Premises Incident 1.

<sup>615</sup> Ibid.

<sup>616</sup> COPS event narrative, Cabramatta LAC, Drug Premises Incident 1.

## 7.5. Level of drug supply the law is targeting in Cabramatta

In Cabramatta, it appears that the Drug Premises Act has been used to target lower level drug supply. Drugs were found in just over 70%, or 27 of 37 houses, units and cars police searched when charges were laid under the Drug Premises Act. As noted elsewhere in this report, NSW Police were unable to provide information on instances when a search warrant under the Drug Premises Act was granted and executed, but no charges under the Drug Premises Act were laid.<sup>617</sup>

Most of the prohibited drug finds in Cabramatta involved heroin and cocaine. No cocaine was located in the second year of the use of the Act. Quantities of heroin found on drug premises ranged from 0.06 of a gram to 1,720 grams. The quantities of cocaine found on drug premises ranged from 0.36 of a gram to 71 grams.

In the figure below, we have set out the number of drug finds that fall into the categories of small, indictable and commercial quantities of prohibited drugs, according to the Drug Misuse and Trafficking Act.<sup>618</sup> According to this Act, heavier penalties are often meted out for offences that involve larger quantities of drugs. Since most of the drug finds in Cabramatta were of heroin or cocaine, the quantities for small, indictable and large commercial quantities of these drugs are set out.

On two identified drug premises in Cabramatta, cannabis (less than the small quantity) was the only prohibited drug located. Other types of prohibited drugs found (on eight identified drug premises) were:

- 2 ecstasy tablets
- vegetable matter (not quantified)
- 2.1 grams of cannabis
- 2.5 grams of cannabis
- 0.23 grams cannabis
- 5 cannabis plants
- 4 bottles methadone, Normison tablets and
- 5.5 ecstasy tablets, 1 bottle of methadone.

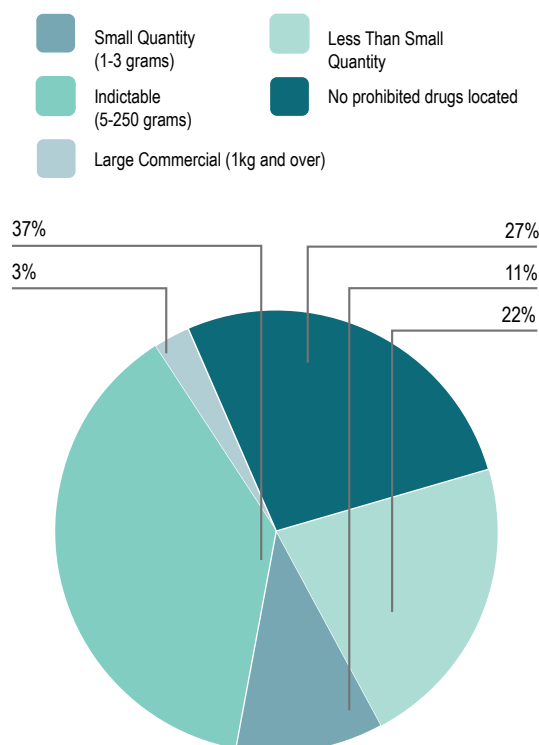
In the Appendix to this report, the drug finds that relate to each particular drug premises in Cabramatta are set out.

### 7.5.1. Money located on drug premises in Cabramatta

Another indicator of drug premises, in section 11 of the Act is any large amount of money that is not accounted for by the owner or occupier of the premises.<sup>619</sup> As discussed in the chapter, "Targeting drug supply", we have also used quantities of money found on drug premises as a gauge of the level of drug supply being targeted by the Act.

Money was found on 24 of the 37 drug premises in Cabramatta. Quantities of money seized on drug premises in Cabramatta ranged from \$50 to \$7220. On 11 occasions, the quantity of money found was less than \$500, and on five occasions, the quantity found was between \$5,000 and \$7,220.

**Figure 15: All drug premises incidents in Cabramatta by quantity of drug found (37 premises)**



Source: COPS event narratives and search warrant documents. Included in the "less than small quantity" are two occasions in which this quantity of cannabis was found. According to the Drug Misuse and Trafficking Act, a small quantity of cannabis is less than 30 grams.

<sup>617</sup> Drugs were found in 27 of 37 incidents.

<sup>618</sup> As we discuss in our Chapter, "Targeting Drug Supply", the *Drug Misuse and Trafficking Act* has "graduated penalties" that relate to the quantity of the prohibited drug that is found, and the jurisdiction in which the matter is being heard.

<sup>619</sup> *Police Powers (Drug Premises) Act*, s. 11(g).

### 7.5.2. Views on the level of drug supply being targeted in Cabramatta

When asked what level of the drug trade they believed that the Act was being used to target in Cabramatta, detectives who had used the legislation said the street-level.<sup>620</sup> Senior police in Cabramatta also put forward this view. According to a former Crime Manager from Cabramatta, the Drug Premises Act had targeted the lower levels of the drug trade in Cabramatta.

*We certainly only operated at lower maybe to medium level. Operations had the focus of being on-going and consistent and flexible, so we wouldn't have been able to keep the pace up of the operations to disrupt the drug trade if we targeted individuals per se, as in high level. If that was the case, then we'd require the assistance of South East Asian Crime or the Drug Squad to come in at that level.*<sup>621</sup>

As the above comments illustrate, resource availability at the LAC level was cited as one reason why the law was being used to target low-level dealing. A previous commander of Cabramatta LAC also believed that this was the case.

*The priority for me was in fact street-level dealing. As a local area commander, you've got responsibility for that street, and as in some cases, middle level drug dealing, and then of course, as it progresses up, there's the more specialised areas who are properly resourced, and who have the time, and not the competing priorities that a LAC has.*<sup>622</sup>

Another reason put forward for the fact that the law was being used to target low level drug supply was that, according to police, drug premises in Cabramatta were part of the lower, and not higher levels of the drug market. A former Cabramatta Crime Manager, who believed that the drug trade consists of three levels - high, medium and low - was asked where drug premises would be placed in the overall structure of the drug trade in Cabramatta:

*Drug premises would sit in, I would say, at middle to low. Certainly the drug premises do require a certain amount of organisation, because you need to have access to the unit in the first place, particularly to lease them. Those that staff them might be a little below mid level, somewhere between that gap between middle to low, because the middle level will probably try and protect themselves, a little bit more organised... [Drug premises are] middle level, staffed by low level.*<sup>623</sup>

Other police we spoke to said that high level drug suppliers were more likely to use safe houses than drug premises to store large quantities of drugs.<sup>624</sup> Safe houses are usually defined as places that are used for the storage of drugs, but not for distribution or supply. In the NSW Police submission to our discussion paper, it was noted that the Drug Premises Act may be more effective against medium and low level suppliers, because high level suppliers are "unlikely to risk police scrutiny by allowing their premises to be used for supply".<sup>625</sup>

In their submission to our discussion paper, the NSW Users and Aids Association (NUAA) commented that the descriptions of drug houses in the Cabramatta Report on Progress<sup>626</sup> that was released in April 2002, indicated that the law was targeting low level drug supply. NUAA argued that the types of items seized on drug premises also suggested this:

*Descriptions of drug houses by police indicate that police view drug houses as "generally filthy with decaying food scraps" and where "used and unused items of drug paraphernalia such as syringes, swabs, foil, scales and balloons are scattered about". Descriptions are indicative of lower level shooting rooms and houses where smaller amounts of drugs are sold and used. Play stations and VCRs have been found instead of the more sophisticated computer records describing drug sales and manufacture, listed in the Act. One can not easily picture the "drug barons" and "Mr Bigs" hanging out in such surroundings.*<sup>627</sup>

A health worker from Cabramatta commented in a submission to our discussion paper that the "only people I am aware of that have been charged with being on a drug premises are those that street deal or deal enough to maintain their own needs. None of these people have money or appeared to have any assets."<sup>628</sup>

We examined 80 court transcripts relating to people who had been charged with drug premises offences in Cabramatta. A history of drug use or addiction was noted in relation to 25 defendants. It is important to note, however, that information of this kind does not always emerge at court. Some transcripts contained no discussion of the personal history of the defendant.

As we noted in the chapter "Targeting drug supply", legal practitioners and another drug advocacy group, while not specifically referring to Cabramatta, were also of the view that the Drug Premises Act was targeting low level drug supply.<sup>629</sup>

<sup>620</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>621</sup> Interview, former crime manager, Cabramatta LAC, 21 August 2003.

<sup>622</sup> Interview, former Commander, Cabramatta LAC, 22 August 2003.

<sup>623</sup> Interview, former crime manager, Cabramatta LAC, 21 August 2003.

<sup>624</sup> Interview, Commander of the Drug Squad, and other interviews.

<sup>625</sup> NSW Police, Submission, received 12 August 2003.

<sup>626</sup> NSW Government, *Cabramatta Report on Progress*, April 2002.

<sup>627</sup> Submission, NSW Users and Aids Association, received 5 August 2003.

<sup>628</sup> Cabramatta Health Worker, Submission, received 30 August 2003.

<sup>629</sup> These submissions were from the Law Society of NSW, the Legal Aid Commission and Family Drug Support.

### 7.5.3 Firearms, weapons and high level drug supply in Cabramatta

In the second reading speech about the Drug Premises Act, links between professional drug dealers and the use of prohibited weapons and firearms were raised.<sup>630</sup>

Some type of weapon, or ammunition, was found on six of the 37 identified drug premises in Cabramatta. A 0.22 calibre rifle was found during an incident in which Cabramatta police seized a large quantity of heroin, the largest drug seizure in any single use of the Act in Cabramatta.<sup>631</sup> On a further five drug premises, the following items were found:

- a meat cleaver and a homemade knife-style weapon
- nine rounds of ammunition
- a samurai sword was located under a bed
- a knife and
- a box of ammunition with 97 live rounds in it.<sup>632</sup>

Detectives we spoke to at Cabramatta believed that the relative absence of firearms on drug premises reflected a change in the nature of criminal activity in the area. They compared the suburb to what it was like in the 1990s, when there had been a series of well-publicised gang-related shootings in the area:

*Cabramatta in the 90s, and when it was running red hot, a lot of those active, violent people were arrested and charged, and the ones that weren't arrested and charged ... they've subsequently gone.*<sup>633</sup>

Similarly, another detective said:

*The dynamics of the area have changed too, you haven't got that so-called gang element, it's not what it used to be. It's more just individuals doing the best for themselves, it's not this organised approach, and you haven't got that ... being armed, it's not as available as it used to be.*<sup>634</sup>

However, one officer put forward an alternative view. He considered that offenders who use firearms, and deal in large quantities of drugs in Cabramatta, have gotten a lot smarter and were now less likely to store prohibited drugs or firearms on the premises they are operating:

*I think they are getting a lot smarter, in terms of firearms and larger quantities of drugs, they don't hold them on the premises they're operating, they've probably got another safe house that [other people] don't know about, telephone intercepts suggest that is the case.*<sup>635</sup>

The case study below documents the incident in which a firearm and largest quantity of drugs was seized when police used the Act in Cabramatta.

#### Case study 22.

##### High level drug supply in Cabramatta

Early one afternoon, police went to a house to make follow up inquiries in relation to a shooting incident. Several days before, shots had been fired into the house, which was inhabited by a woman and her three children.

Police pressed the intercom outside the front gate and, while waiting for the electronic gate over the driveway to open, saw a man throw a bag over the fence into the neighbour's backyard. They called out to him, but he continued to walk towards the rear of the premises. At the same time, the female occupant of the house came out of her front door.

Police went into the neighbour's yard and recovered the bag. They found that it contained items wrapped in plastic and tape, several containers filled with white powder that was later found to be 1 kilogram of heroin, and a 0.22 calibre rifle. There was also a black and red tackle box with a sealed package inside it. Police then applied for, and were granted, a search warrant.<sup>636</sup>

<sup>630</sup> The Hon. R. Debus, NSWPD, 30 May 2001, p. 13997.

<sup>631</sup> COPS event narrative, Cabramatta LAC, Drug Premises Incident 36.

<sup>632</sup> COPS event narratives, Cabramatta LAC.

<sup>633</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>634</sup> Ibid.

<sup>635</sup> Ibid.

<sup>636</sup> The type of search warrant applied for is not noted.

The woman initially denied knowing the man who had thrown the bag over the fence. However, while police were questioning her inside the house, “she was seen to attempt to hide a pair of mens shoes by pushing them under a lounge.”<sup>637</sup> The woman later admitted that the man had been living in her house for several weeks. She said that he was from Cambodia, and she only knew him by his first name. Police note that they found a small number of items allegedly belonging to the man, including a suitcase indicating that it had been brought back to Sydney from an overseas destination several weeks ago.<sup>638</sup>

In their search of the house, police found a coffee grinder, a heat-sealing machine, \$5,000 cash and packaging similar to that found inside the bag that was found in the neighbour’s yard. Police also found a pair of women’s platform shoes that had substantial quantities of heroin inside them. In the event narrative, the outcome of tests run on the platform shoes is outlined:

*On [date], a pair of ladies platform shoes were examined by AGAL.<sup>639</sup> Each shoe was found to contain a further 360 grams each of heroin. These shoes were one of the items seized on [date]at [address]. The shoes were wrapped in a green coloured plastic shopping bag and then wrapped in masking tape.*

*The drugs were concealed in the sole of the shoe which is approximately three inches thick. The sole had been hollowed out. The shoes are black in colour and labelled “THE FASHION BRAND”.*

*Customs have been spoken with and they have informed police that this method is becoming extremely common recently.<sup>640</sup>*

At the conclusion of the event narrative, police made the following assessment of the premises:

*Police claim that these premises are drug premises for the following reasons.*

- 1) Shot Fired Into Them on [date]
- 2) Amount of Drugs Disposed of and Located
- 3) Packing equipment located inside
- 4) \$5000.00 cash located inside
- 5) Firearm disposed of with drugs
- 6) Fortifications to the premises<sup>641</sup>

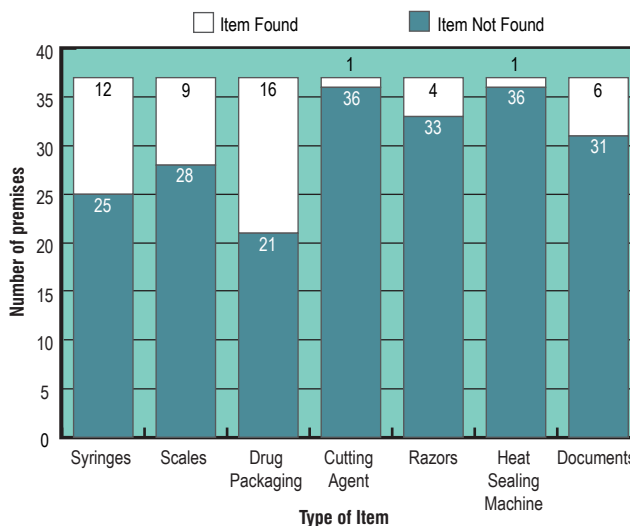
The woman was charged with allowing her premises to be used as a drug premises. At the time of writing, the matter has not yet been heard at court, and the man who threw the bag over the fence had not been located by police.

#### 7.5.4. Items found in drug premises in Cabramatta

According to section 11(d) of the Drug Premises Act, drug premises may be defined by syringes or other means or devices used in the supply, manufacture or use of a prohibited drug.

As the graph shows, drug packaging was the most common item that is associated with drug supply found on drug premises in Cabramatta. Drug packaging includes foil, balloons and plastic resealable bags.

Figure 16: Items found on drug premises in Cabramatta



Source: COPS event narratives and search warrant documents

<sup>637</sup> COPS event narrative, Cabramatta LAC, Drug Premises Incident 36.

<sup>638</sup> Ibid.

<sup>639</sup> AGAL is the Australian Government Analytical Laboratory. Police send suspected prohibited drugs to AGAL for analysis.

<sup>640</sup> COPS event narrative, Cabramatta LAC, Drug Premises Incident 36.

<sup>641</sup> Ibid.



## 7.6. Charges laid under the Drug Premises Act in Cabramatta

### 7.6.1. A brief overview

Police in Cabramatta laid a high proportion of the total number of charges laid under the Drug Premises Act in NSW over the two year review period.

The table to the right shows the number of charges laid for each of the key offences in Cabramatta, and the total number of charges laid for each of these offences in all other LACs.

Thirty-seven per cent (37%) of the charges laid State-wide over the review period for being found on, entering or leaving drug premises were laid in Cabramatta, and about 20% of the charges for the other two key offences in the Drug Premises Act.

As noted earlier in this chapter, 59 of the 118 people who were charged on drug premises in Cabramatta were charged with a drug premises offence only, and were not charged with any drug offences, such as possession or supply, under the Drug Misuse and Trafficking Act.

In this section, we will discuss concerns that innocent people found on drug premises might be charged, and then have difficulties proving their innocence. We will also discuss concerns that particular groups, such as young people, might be targeted in the enforcement of the Drug Premises Act. We will also set out data on the demographic characteristics of those who were charged under the Act.

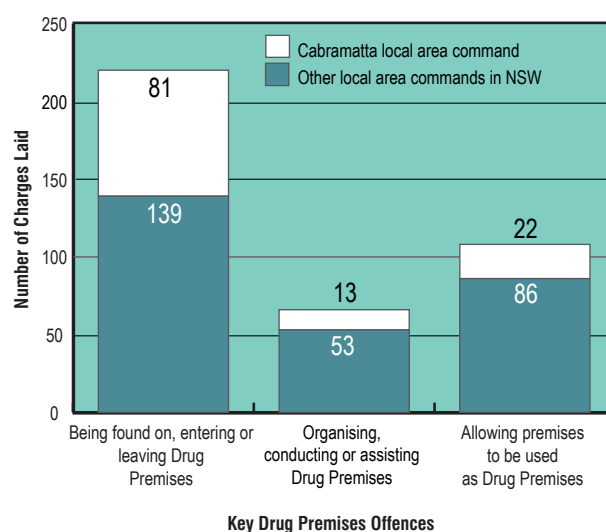
### 7.6.2. Concerns raised about the application of the Drug Premises Act

Particular concerns were raised about the use of the Act on domestic drug premises, and the possibility that innocent people that were found on drug premises, such as flatmates, children or spouses, may be charged.

Our examination of police documents relating to uses of the Act in Cabramatta revealed that police often, though not always, charged all the people they found on drug premises. In some cases, this meant that police charged up to seven people who were on the premises when the warrant was executed. Charging all persons present is clearly appropriate if police believe that the place is a drug premises, and that none of those present had a lawful purpose or excuse for being there.

According to the former Crime Manager at Cabramatta, one reason why police tended to charge all people on fortified, non-domestic premises in Cabramatta was because of the reverse onus,<sup>642</sup> and because of the nature of the place and the fact that police believed the drug related activity taking place on the premises was obvious. But, like the other officers at

Figure 17: Number of drug premises charges laid in Cabramatta and all other LACs in NSW, 1 July 2001 to 30 June 2003



Source: Data extracted from the COPS database.

Cabramatta we spoke to, the former Crime Manager also noted that police exercised discretion in instances in which it was clear that the person on the drug premises was an “orange in a bunch of apples”.<sup>643</sup>

In our focus group with Cabramatta police, officers discussed how decisions to charge people are made after police enter premises. We also sought their views on the concern that innocent people found on drug premises may be charged. One officer pointed to the various safeguards that exist in the execution of search warrants, and in the process of deciding whether to charge particular people. He said there were a number of safety barriers in how warrants are executed:

*You've got the Independent Officer who will give advice to the people, the sergeant who took the warrant out will give advice to the people doing it, and then you've got to go back to the station and get that charge approved for a sergeant of police to say, "Yeah, OK, we'll allow that charge", so there's a number of safety factors before that person actually gets charged.*<sup>644</sup>

Another officer said that he believed there hasn't been too many mums, or grandmas and grandchildren locked up under the Drug Premises Act.<sup>645</sup>

In the 80 court transcripts we examined relating to people charged under the Act in Cabramatta, there was no evidence to suggest that people appeared to have been charged inappropriately. As we have noted elsewhere, a number of people pleaded guilty to the charges laid against them. The guilty plea itself may be taken

<sup>642</sup> The operation of the “reverse onus” in relation to two drug premises offences is discussed in the Chapter on “Offences in the Drug Premises Act”.

<sup>643</sup> Interview, former crime manager, Cabramatta LAC, 22 August 2003.

<sup>644</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>645</sup> Ibid.

as evidence that the charge was not inappropriate. However, a health professional from Cabramatta put forward another perspective on why people may have pleaded guilty to those offences in relation to which a reverse onus applies:

*The people I am aware of that have been charged under the Act are often illiterate and inarticulate, they may not have an understanding of the law and their past experience has been very negative. They believe that they will not get a fair hearing therefore they don't try to explain themselves.*<sup>646</sup>

We note here again our discussion and recommendations at Chapter 6 in relation to the offences in the Act.

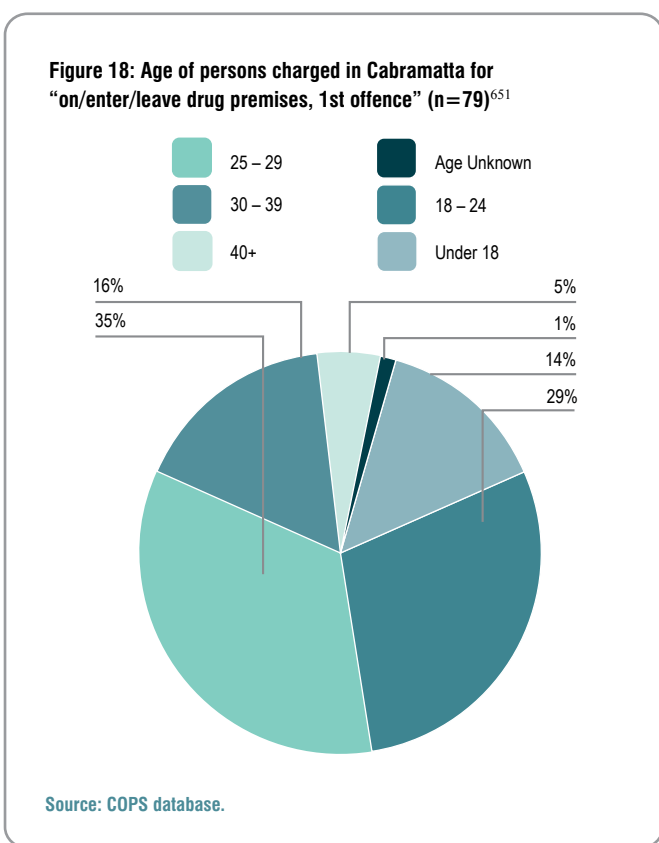
### 7.6.3. Charges laid against young people on drug premises in Cabramatta

Concerns were raised that the Act may have a disproportionate impact on particular groups, such as young people. The practice of employing young people to sit in drug premises in Cabramatta was discussed in Parliament. Concern was expressed that the Drug Premises Act may be used against these young people, and that they may become the “fall guys for the real drug supplier”.<sup>647</sup> Commenting on the involvement of young people in drug premises, one member of the Legislative Council said:

*The controllers already protect themselves by employing young people to sit in apartments, and by taking over apartments from innocent parties. Therefore, those suffering the penalties under this legislation are likely to be minor players only.*<sup>648</sup>

Researchers on the drug trade in Cabramatta have also commented on the practice of using young people to staff drug premises. One academic reported that in Cabramatta, flats are organised by dealers who set up a few kids with a play station and a TV so that they can deal drugs from the premises.<sup>649</sup> These premises may be houses, flats or squats.

Our research findings indicate that 14% of those charged with the offence of on, enter, leave drug premises in Cabramatta were under 18. One Cabramatta detective we spoke to said that he would have expected that more young people would have been involved in drug premises, but “generally most seem to be adults”.<sup>650</sup>



In Cabramatta, no young people were charged with the offence of organise, conduct assist drug premises, nor were any young people charged with the offence of allowing a premises to be used as a drug premises. In a submission to our discussion paper from the NSW Users and Aids Association (NUAA), it was argued that organising drug premises may connote a higher level of involvement in the drug related activities on the premises, than being found on drug premises.<sup>652</sup> The fact that no young people were charged with these offences may reflect a tendency for young people to be less involved in the organisation of the drug premises.

There were also instances in which children were found on drug premises but were not charged. We are aware of an incident in which police chose not to charge a young person for a drug premises offence, despite the fact that they had information that may have enabled them to do so. In this instance, police had “numerous intelligence reports”<sup>653</sup> of drug dealing at the unit and had questioned drug users after they had left the unit. One of these drug users had said “a little kid sold to him out the window”.<sup>654</sup> When police entered the premises, they found a woman, her boyfriend and several children. Police charged the two adults inside the house, and a third man who came to the window with 7.5 grams of heroin just before the warrant was executed, but none of the children were charged.<sup>655</sup>

<sup>646</sup> Submission, Health Professional, received 30 August 2003.

<sup>647</sup> The Hon. Ian Cohen, NSW Parliamentary Debates, 7 June 2001, p. 14636.

<sup>648</sup> The Hon. Richard Jones, NSW Parliamentary Debates, 7 June 2001, p. 14630.

<sup>649</sup> Interview, Academic, 14 November 2002.

<sup>650</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>651</sup> 103 people were charged in Cabramatta, but some people were charged more than once, bringing the figure to 118.

<sup>652</sup> Submission, NSW Users and Aids Association, 5 August 2003.

<sup>653</sup> COPS event narrative, event narrative 1, Drug Premises Incident 29.

<sup>654</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>655</sup> COPS database.

#### 7.6.4. Young Asian people and drug premises

Research on the drug trade in Cabramatta has suggested that drug law enforcement in Cabramatta may have a disproportionate impact on young Asian people, particularly those who are also drug users. In *Running the Risks*, an ethnographic study of the drug trade in Cabramatta, it was argued that Asian people are more likely to fund their drug use by dealing, rather than by committing property crime.<sup>656</sup> It has also been suggested that because of this, high proportions of young Asian people are more likely to be apprehended in drug law enforcement initiatives in the area.<sup>657</sup>

In a submission to our discussion paper, one health worker from Cabramatta pointed to the high unemployment in the area as a reason why young Asian people may become involved in the drug trade:

*The most vulnerable group in the community is the Indo-Chinese community. Because of high unemployment young people get involved in the drug trade as it is often seen as "easy money". They are often paid to bring clients in or take drugs to clients.*<sup>658</sup>

Our research does indicate that about half of those under 18 who were charged under the Drug Premises Act in Cabramatta were of Asian origin.<sup>659</sup> Of the ten males who were under 18 charged with the offence of being found on, entering or, leaving drug premises, five were of Asian origin. One of the two females who were under 18 and charged with this offence, one was of Asian origin, and one was not.<sup>660</sup>

#### 7.6.5. Ethnicity and gender of people charged on drug premises in Cabramatta

Of those charged on drug premises in Cabramatta who were over eighteen years old, 60% were born in an Asian country: 72 of 118.<sup>661</sup> The highest proportion were born in Vietnam.

Most of those charged on drug premises in Cabramatta were male. Of those who were charged under the Act, 86, or just over 70% were male, and 32 were female.<sup>662</sup>

#### 7.6.6. Homeless people living on drug premises

In an ethnographic study of homelessness in Cabramatta released in late 2001, it was reported that some drug houses give young homeless people a place to stay, provided they agree to sell drugs from the premises. One 18 old Vietnamese-Australian male interviewed for the report said:

*Oh I was staying at a house, selling at a house so I got a place where I can stay. Someone else was renting it and I was selling in there. So I stay in there for a long time too. So I was alright. And then came out. Then got raided and I came out here.*<sup>663</sup>

Concerns that the Act would have a disproportionate impact on vulnerable groups in the community, including young people and the homeless, were raised in a submission by the NSW Council of Social Services that was quoted during parliamentary debate on the Act. In the submission, concerns were expressed that children, the homeless and others "who are inadvertently involved with illicit drug activity for various reasons, are potentially exposed to police arrest in drug houses".<sup>664</sup>

There was no evidence in the police documents or court records we examined that the young people found on drug premises were on the premises because they were homeless. This type of information would most likely be found in court transcripts detailing the circumstances of a person charged. However our examination of court transcripts was limited because of the high proportion of defendants who pleaded guilty.

There were two instances in Cabramatta in which the Drug Premises Act was used on squats in the area. Concerns were raised about one of these incidents in a report on youth homelessness in Cabramatta. According to the report, the house had been occupied by successive groups of squatters since December 2000, and the original squatters did not sell drugs from the property. This group was evicted by police, and replaced by a succession of occupants, and "it became increasingly difficult for the residents to control access to the site and the use of drugs on the premises".<sup>665</sup> The report stated that the squat eventually became a de facto injecting room and was subject to repeated police raids. In the report, it was argued:

<sup>656</sup> Lisa Maher, David Dixon, Michael Lynskey and Wayne Hall, *Running the Risks, Heroin, Health and Harm in South West Sydney*, National Drug and Alcohol Research Centre University of NSW Monograph No.38, 1998. See, for example, pp. 60- 61.

<sup>657</sup> David Dixon and Lisa Maher, "Anh Hai: Policing, Culture and Social Exclusion in a Street Heroin Market", *Policing and Society*, Vol. 12, No. 2, pp 93-110.

<sup>658</sup> Submission, Health Worker, Cabramatta, received 30 August 2003.

<sup>659</sup> COPS database.

<sup>660</sup> COPS database.

<sup>661</sup> The countries of birth recorded by police were Cambodia, Thailand, China, Laos, Singapore and Vietnam.

<sup>662</sup> COPS database.

<sup>663</sup> Coupland, Heidi, Lisa Maher and Myly Thach, *Every Day's the Same, Youth Homelessness in Cabramatta*, 2001, p. 21.

<sup>664</sup> Hon I. Cohen, NSWPD, 7 June 2001, p. 14636.

<sup>665</sup> Heidi Coupland, Lisa Maher and Myly Thach, *Every Day's the Same, Youth homelessness in Cabramatta*, November 2001, p. 22.

*This example is qualitatively distinct from the kind of “drug house” that the legislation was purportedly directed at ... Using the new legislation to arrest and prosecute homeless people is disingenuous and can only serve to further entrench their marginalisation. The criminal law is a blunt and ineffective instrument incapable of making the kinds of distinctions necessary to respond to complex social and economic realities which underpin homelessness and drug use.<sup>666</sup>*

The incident in which the Drug Premises Act was used on this squat is documented in the case study below.

## Case study 23.

### Squat as drug premises Cabramatta

Police had intelligence that drugs were being dealt from a squat in Cabramatta that was in the grounds of a bowling club. Intelligence about drug dealing and drug use at the squat came from a range of sources, including police informants, community sources and drug users who were questioned after they left the premises. We examined ten intelligence reports relating to this premises. One report stated that police had been told:

*On most occasions drugs are sold in the morning for a few hours and then after a break they start selling again in the afternoon for a few hours. But when drugs are not being sold from the premises people still come and go and use the place to inject themselves.<sup>667</sup>*

Police conducted surveillance on the squat for several days. They saw “numerous persons attend the premises for a short time before leaving again”.<sup>668</sup> Several days later, police sought permission from the manager of the bowling club to search the premises. That afternoon, police from the Greater Hume TAG gained entry. They found six adults and an eight-year old child in the house.

During their search, police found about 700 syringes scattered throughout the rooms of the squat, and about 100 syringes in the bathroom. Safe Injecting Room was written on the rear bathroom wall. Police also found 150 water balloons, \$1000, and nine rounds of rifle ammunition. Property that police believed to be stolen was also found, including a computer, a mountain bike and jewellery. In the event narrative relating to this incident, it is noted that:

*Police believe the premises is a drug house as set out in the Drug Premises Act, 2001. Police believe the premises is used as a drug house in that persons would either use the dedicated injecting room or one of the other rooms and inject the drugs purchased.<sup>669</sup>*

All six people found on the premises were charged with being found on drug premises. That evening, the squat was demolished.

One man was convicted of being found on drug premises, and sentenced to nine months gaol. A woman who was found on the premises was also convicted, and fined \$300. Charges against two other people were dismissed or withdrawn. A further two people failed to appear at court, and a warrant was issued for their arrest.

## 7.7. Court outcomes relating to drug premises charges laid in Cabramatta

Court results and pleas entered into in relation to 80 (eighty) defendants who were charged with a drug premises offence in Cabramatta are set out below.<sup>670</sup>

### 7.7.1. Being found on, entering or leaving drug premises (first offence)

Court results relating to 52 defendants who were charged with being found on, entering or leaving drug premises in Cabramatta are shown in the table below.

<sup>666</sup> Ibid, p. 22.

<sup>667</sup> Intelligence Report, Cabramatta LAC, Drug Premises Incident 9.

<sup>668</sup> COPS event narrative, Cabramatta LAC, Drug Premises Incident 9.

<sup>669</sup> Ibid.

<sup>670</sup> These statistics have been collated from court transcripts analysed for this review in relation to 80 defendants who were charged in the Cabramatta LAC.

Of these 52 people, 31 people pled guilty, and 7 pled not guilty. A further 14 did not enter a plea, in some instances this was because they failed to appear in court, or because the charge was withdrawn.

**Table 14. Being found on, entering or leaving drug premises (first offence) in Cabramatta, court results**

Court Outcome	Number of Defendants
Conviction	32
Filed in Court <sup>671</sup>	2
Warrant to Issue	6
Dismissed	8
Withdrawn	4
Total Number of Defendants	52

Source: Local court transcripts.

**Table 15. Being found on, entering or leaving drug premises (first offence) in Cabramatta, penalty type**

Penalty Type	Number of Defendants
Imprisonment (3 - 12 months)	17
Community Service (100 - 200 hours)	2
Probation (18 – 24 months)	2
Bond (9 months - 2 years)	9
Fine (\$100 - \$400)	2
Total	31

Source: Local court transcripts.

Of the 17 people who received a gaol sentence for being found on drug premises, 7 people received the maximum penalty of 12 months imprisonment. Nine people received custodial sentences ranging from three months to six months imprisonment, and one person was sentenced to nine months imprisonment.

The bonds given to four defendants were of nine months, 12 months, 18 months, and two years in length. The two fines issued were of \$100, and \$400.

### 7.7.2. Being found on, entering or leaving drug premises (second offence)

We examined two court transcripts relating to defendants who had been charged with a second offence of being found on, entering or leaving drug premises in Cabramatta. The maximum penalty for this offence is a term of five years imprisonment, or a fine of \$55,000. Both defendants pleaded guilty, and each received a twelve month term of imprisonment.

### 7.7.3. Organising, conducting or assisting drug premises

Court results for seven defendants<sup>672</sup> who were charged with organising, conducting or assisting drug premises in Cabramatta are set out in the table below.

<sup>671</sup> Charges are usually filed in court when a person has been charged with other offences which attract higher penalties. These charges are dealt with in the court proceedings, and the drug premises charge is filed at court.

<sup>672</sup> We examined a further two court cases relating to people who had been charged with this offence, but at the time of writing, the two defendants had not yet been sentenced.

**Table 16. Organising, assisting or conducting drug premises (first offence) in Cabramatta, court results**

Court Outcome	Number
Conviction	3
Filed in Court	1
Form 1	1
Dismissed	1
Withdrawn	1
Total Number of Defendants	7

Source: Local court transcripts.

Five of the seven people who were charged with this offence pleaded not guilty, and two pleaded guilty.

All three defendants who were convicted of organising, conducting or assisting in organising or conducting drug premises, received custodial sentences. One person received an eight month term of imprisonment, and two defendants were each sentenced to 12 months imprisonment.

#### 7.7.4. Allow premises to be used as drug premises

We examined 15 court proceedings relating to people who were charged with allowing their premises to be used as drug premises in Cabramatta.

**Table 17. Allowing premises to be used as drug premises (first offence) in Cabramatta, court results**

Court Outcome	Number
Conviction	8
Filed in Court	1
Form 1	1
Dismissed	3
Withdrawn	2
Total Number of Defendants	15

Source: Local court transcripts.

Of these 15 people, five pleaded guilty, eight pleaded not guilty, and two people did not enter a plea.

Five of the eight people who were convicted of allowing their premises to be used as drug premises received a term of imprisonment. Three people received the maximum penalty of 12 months imprisonment, one person received six months, and another, three months imprisonment. A further three people who were convicted received bonds. Two defendants received a three year bond, and one received a 12 month bond.

## 7.8. Conclusion: Impact of the Drug Premises Act on the drug trade in Cabramatta

### 7.8.1. Concerns about the use of the legislation in Cabramatta

One of the concerns raised about the Act in parliamentary debate was that the use of drug premises legislation in Cabramatta could harden the target and cause the illicit drug trade in the area to become more organised and professional.<sup>673</sup> It was feared that drug market participants may develop new *modus operandi* to avoid the impact of the new legislation.

Another common impact of intensive drug law enforcement in one area is the displacement of the drug trade to neighbouring localities.<sup>674</sup> During parliamentary debate on the Act, one member of the Legislative Council said that a previous police blitz to get rid of the drug problem in Cabramatta did get rid of the problem for a while, but the drug trade moved to other areas.<sup>675</sup>

These concerns arose from the knowledge that illicit drug markets are often able to adapt to the strategies put in place to police them. One academic has argued that probably “the most serious impediment to effective enforcement is the remarkable regenerative quality of most illicit drug markets”.<sup>676</sup>

The ambit of this review, and the length of time we have to conduct it, have limited our ability to assess the broader, or longer-term impact of this law. The displacement of the drug trade is one phenomenon that may only become clearly evident over time.

It is also important to note, that although the nature of the illicit drug market in Cabramatta appears to be changing, it is not possible to isolate the cause of this change in terms of individual legislative instruments like the Drug Premises Act or policing strategies. Police in Cabramatta also use other strategies and legislative tools to deal with the illicit drug trade in the area, such as regular operations that involve the use of street-level police operatives who conduct controlled drug buys from street dealers.<sup>677</sup> It is beyond the scope of this review to isolate the impact of these various, and sometimes overlapping, drug law enforcement strategies on the illicit drug trade.

At the end of this report, we discuss the overall impact that the Drug Premises Act appears to have had on the drug trade in Cabramatta, and consider issues such as whether the drug trade appears to have been displaced to other areas. In this section, we will consider evidence that specifically relates to the impact of the Drug Premises Act on drug premises.

### 7.8.2. Increased transience of drug houses

Police in Cabramatta have informed us that the drug houses in the area have become more ephemeral. In late 2002, a former Crime Manager from Cabramatta LAC had observed that drug houses tended to operate for limited periods of time, shut down, and move elsewhere.<sup>678</sup> In the focus group that we conducted in July 2003, Cabramatta police we spoke to made the same observation. One officer said:

*What they do now, what I've found, ... they don't operate for long periods, like they might operate for a week or two. By the time we get a call from the public, and we start doing a bit of observation of the place, they've shut down. They pop up somewhere else, and you'll have to start all over again. Whereas three years ago, they just kept going until they got busted, they didn't care.*<sup>679</sup>

A senior officer from Cabramatta reported similar difficulties, describing the situation as a “cat and mouse game”.<sup>680</sup> This officer said “by the time we get the evidence that we require” to get a search warrant for the drug premises it is too late, “they have shut down and moved somewhere else”.<sup>681</sup> A detective from Cabramatta also told us that some drug premises only operate for a short time, specific hours, or they will only sell drugs to people they know, so it is difficult for police to conduct undercover drug buys from the premises. This officer also noted that a “lot of phone dealers have closed their book on who they deal to”.<sup>682</sup>

<sup>673</sup> Hon. R. Jones, NSWPD, 7 June 2001, p. 14630.

<sup>674</sup> Hon I. Cohen, NSWPD 7 June 2001, p. 14633 and Ms C. Moore, NSWPD, 6 June 2001, p. 14507. Ms Moore noted that a “severe crackdown on the existing drug trade could result in similar outlets appearing in my electorate.”

<sup>675</sup> Hon. I. Cohen, NSWPD, 7 June 2001, p. 14633.

<sup>676</sup> Grant Wardlaw, quoted in P. Green and I. Purnell, *Measuring the success of law enforcement agencies in targeting major drug offenders relative to minor drug offenders*, National Police Research Unit, Adelaide, 1995, p. 6.

<sup>677</sup> These operations are conducted under the authority of the *Law Enforcement (Controlled Operations) Act 1997*.

<sup>678</sup> Interview, former crime manager, Cabramatta LAC, 28 June 2002.

<sup>679</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>680</sup> Personal communication, Senior Officer, Cabramatta LAC, 1 August 2003.

<sup>681</sup> *Ibid.*

<sup>682</sup> Focus group, Cabramatta police, 2 July 2003.

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In addition, as we discuss later in this chapter, police and health professionals have also observed that the nature of drug houses in Cabramatta has also changed. In the words of one health professional, drug houses now tend to look “more normal”.<sup>683</sup> This change in the nature of drug premises may thwart police attempts to mount operations against them. Moreover, if these premises merge more harmoniously with their surroundings, they may become more difficult for police to detect in the first place.

### 7.8.3. Are drug transactions conducted elsewhere?

One officer we spoke to believed that higher level drug transactions may now be less likely to be conducted in Cabramatta due to the intensity of the police focus on drug law enforcement, but that they may be taking place in other areas:

*But the business itself of the transactions, are not conducted here, they are conducted elsewhere, because of the high visibility policing that is conducted in Cabramatta, and they know, that the likelihood of driving up [street name] Cabramatta, and police know you, you're going to get turned over, because you're a drug dealer.*<sup>684</sup>

In our examination of the uses of the Drug Premises Act by the State Crime Command, it was evident that police were investigating high level drug supply from drug premises in suburbs neighbouring Cabramatta. Further, according to police, the occupants of these premises in neighbouring suburbs were supplying drugs to people in Cabramatta. In a police document that related to a use of the legislation on a premises in a suburb neighbouring Cabramatta, that was occupied by people suspected of involvement in heroin importation, it was stated that the operation had been formed to “investigate middle to upper level (drug) heroin suppliers in the Cabramatta area”.<sup>685</sup> However, whether these dealers had been displaced from Cabramatta is not known.

*Police in Cabramatta believed that the displacement that had occurred recently was different to previous changes in the drug trade that they had observed. They said that “the displacement with drug houses was only a few streets, now they are broadening their scope” and moving beyond Cabramatta itself.*<sup>686</sup> *When asked what evidence indicated that this displacement had occurred, this officer said that these other LACs were now running controlled operations to target drug dealing. He also said that the “increase in drug detection in the area [the two neighbouring suburbs] is dramatic”, and that there had been “increased drug users attending” these suburbs. Another officer said, “I shop in [neighbouring suburb] and I see the dealers that were here, over there”.*<sup>687</sup>

These officers also provided examples of particular drug offenders they had charged in Cabramatta who had started dealing in neighbouring suburbs. One detective mentioned two people who had been charged during Operation Hammer which targets street dealing in Cabramatta:

*They got charged in Hammer, they got bail, so they were working on the streets, just doing street deals here, they were living in [neighbouring suburb] and actually just got a car, and started dealing in [same suburb] in the car, and they got done for supply there, whilst they were on bail over here.*<sup>688</sup>

### 7.8.4. Dealers no longer operating from premises

There is some evidence that some dealers are now choosing not to operate from fixed locations such as a drug premises.<sup>689</sup>

Instead, dealers are setting up meetings with drug purchasers, sometimes using mobile phones, on street corners, parks and other places that are not known for drug supply. Because these locations constantly change, it is less likely that the dealing will attract the attention of police. According to a local health professional we interviewed, dealers also sometimes use runners who they send out from the premises to conduct transactions:

*Now a drug user would have a mobile number, people don't go to the door, they have runners and you will meet that person on a street corner.*<sup>690</sup>

Another apparent shift in the illicit drug trade is the increased use of cars to facilitate meetings between dealers and users. In a response to our discussion paper, though not referring specifically to Cabramatta, a senior judge at the Drug Court in Parramatta identified this characteristic of the illicit drug trade:

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<sup>683</sup> Interview, Health Worker, 15 September 2003.

<sup>684</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>685</sup> Situation Report, State Crime Command, Drug Premises Incident 6.

<sup>686</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>687</sup> Ibid.

<sup>688</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>689</sup> Interview, Health Worker, 15 September 2003.

<sup>690</sup> Interview with health professional who works with drug users in Cabramatta.



*By way of comment, the continuing availability of drugs is highlighted by the extent of drug use and drug related offending that is canvassed in this Court. It is very noticeable that much of the drug dealing of which I am informed involves mobile phones being used to seek the drug and supply by dealers arriving in motor vehicles. I do not know if this suggests that there is a relationship between this method of supply and the effect of the legislation on static drug premises.<sup>691</sup>*

Police in Cabramatta have also recently commented that the increased use of mobile phones has created additional difficulties not only in tracking a mobile drug offender, but also in obtaining evidence of their activities.<sup>692</sup> Phone contact between drug purchasers and sellers to organise transactions has long been a part of the illicit drug trade, and tracking and recording phone conversations has been an important evidentiary tool for police in drug investigations. A Crime Manager from Cabramatta recently commented that practices such as the use of multiple mobile phones and of pre-paid cards is making it increasingly difficult for police to track and verify the identity of drug suppliers.<sup>693</sup>

### 7.8.5. Views on the impact of the legislation in Cabramatta

Police believe that drug premises are now less prevalent in Cabramatta. One Cabramatta detective said that drug premises had been rampant in Cabramatta, but now, “while there are still obviously drug premises operating, it is not to the same degree”.<sup>694</sup> Another officer noted that the illicit drug trade in the area had certainly slowed down dramatically, but that this may be due to a combination of factors, including the heroin drought.<sup>695</sup>

In the second year of the review period, the frequency of the use of the Act in Cabramatta decreased by almost 50%. In the first year, from 1 July 2001 to 30 June 2002, the Drug Premises Act was used in Cabramatta on 24 occasions, and in the second year of the review period, the legislation was used in relation to 13 drug premises in the area.<sup>696</sup>

According to police, the fortified non-domestic drug premises that were referred to in the legislation were quickly eradicated under the Act. Our research findings show that police used the Act on eight non-domestic drug premises in the first year, and none in the second year. Police have attributed the rapid reduction in the prevalence of this type of drug premises to the fact that drug market participants soon became aware that they could be charged with the new offences under the Act:

*It was a bit of a shock to them that they could actually be charged with something, because they were so used to us walking in and taking doors. So very, very quickly did the drug premises, in that form I was describing, with the heavy fortified door, coupled with the fact that we identified where they were making the drug premises ... the doors ... so they went out of business.<sup>697</sup>*

Police in Cabramatta reported to Workcover a local business that was unwittingly supplying steel doors custom made for drug premises. The business was subsequently shut down for occupational health and safety reasons.<sup>698</sup>

In a submission to our discussion paper from a senior police officer, we were informed that the “legislation has proved very effective in the policing of drug premises operating within the Cabramatta LAC”.<sup>699</sup> This officer expressed concern that any amendment to the Act would “almost certainly bring about the resurgence of drug premises in and around the Cabramatta area and the associated crime and social problems”.<sup>700</sup>

Community leaders and health professionals we spoke to also said that the numbers of fortified drug premises in Cabramatta had diminished. One health professional said that all the obvious drug houses, they all got closed down and that the houses where dealing is currently taking place are “more normal”.<sup>701</sup> In this person’s opinion, it was now much more difficult to purchase drugs in Cabramatta, and they imagined that for “someone new to the area now, you wouldn’t be surprised if it took them a while to get on”.<sup>702</sup> Another health professional we consulted believed the Act had a major impact, in combination with the Anti Drugs Strategy, “to crush the drug trade” in Cabramatta.<sup>703</sup> However, as we discuss in the chapter, “Drug Move-ons in Cabramatta”, these health professionals also believed that the apparent successes in the policing of the drug trade in Cabramatta had come at a cost to public health.

<sup>691</sup> Letter in response to Discussion Paper, Senior Judge, Drug Court, Parramatta, 17 July 2003.

<sup>692</sup> Personal communication, Senior Officer, Cabramatta LAC, 17 October 2003.

<sup>693</sup> Ibid.

<sup>694</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>695</sup> Ibid.

<sup>696</sup> COPS event narratives, Cabramatta LAC.

<sup>697</sup> Interview, former crime manager, Cabramatta LAC, 21 August 2003.

<sup>698</sup> Ibid.

<sup>699</sup> Submission, Senior officer, Cabramatta LAC, 11 August 2003.

<sup>700</sup> Ibid.

<sup>701</sup> Interview, Health Worker, 15 September 2003.

<sup>702</sup> Ibid.

<sup>703</sup> Interview, Health professional, 24 July 2003.

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Several community leaders we spoke to also said that the numbers of drug premises in Cabramatta had been reduced since the Drug Premises Act came into operation. A local businessman and campaigner on policing issues in the area said that there had been a reduction in the availability of heroin that has been attributable to the law and "there are no are no longer queues outside drug premises".<sup>704</sup> However, he questioned both the number of drug houses that had been shut down, and the reasons for their closure:

*Not the number police claim of drug houses have been shut down, many drug houses have been closed down because of the heroin drought ... but there also was active targeting and they did close down a number.*<sup>705</sup>

A community leader and Fairfield City Councillor<sup>706</sup> also agreed that the drug trade was now much less obvious, but queried police figures on the numbers of drug premises that had been shut down. He said that "the numbers of houses that are claimed to have been closed down are not quite equating with what other people are saying in the Fairfield area". But, at the same time, he was surprised that the Act had not been used more often:

*I am quite surprised that given that the police asked the government to give them these new powers based on the fact that they claimed that there were many known drug houses in Cabramatta and that the existing laws that police had were inadequate to close them down, police went to the government and asked for more powers. I am quite surprised that the number of drug houses that they have used the powers on have been quite few.*<sup>707</sup>

### 7.8.6. Conclusion

Our review has not found any instances where the application by police of the Drug Premises Act has been inappropriate. Although there are identified information gaps (see Chapter 2), the information we have received suggests police have generally implemented the legislation fairly.

There is a clear impact of the legislation on young persons, and persons of Asian background in Cabramatta. However, there is no indication of any inappropriate targeting of persons by police.

We have recommended a review of the reverse onus provisions in section 12 of the Act , and believe this will not reduce the effectiveness of the Act.

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<sup>704</sup> Interview, Local business leader, 16 September 2003.

<sup>705</sup> Ibid.

<sup>706</sup> Cabramatta is within the Local Government Area (LGA) of Fairfield Council.

<sup>707</sup> Interview, Local community leader and Fairfield City councillor, 16 September 2003.

# Chapter 8. Targeting drug supply

Parliamentary debate on the Drug Premises Act indicates that the legislation was aimed at major and organised criminals who are operating drug premises. The understanding that the Act would be particularly useful in dealing with this type of offender was reflected in references made to drug barons, major and organised criminals, the big end of town and to professional criminality in debate about the Act.

Concerns expressed by some parliamentarians about certain aspects of the legislation, such as the reversal of the onus of proof,<sup>708</sup> appeared to be assuaged by the assurance that the Act would assist police in dealing with this type of offender. One member of parliament, for example, who considered that aspects of the legislation constituted a departure from fundamental principles of criminal justice, conceded that the law may nonetheless “be justified by the need for effective powers to combat the drug trade”.<sup>709</sup> There were also concerns expressed in parliamentary debate, and in submissions to our discussion paper, that the legislation may target user/dealers, instead of high level drug suppliers.

Not all aspects of the illicit drug trade are targeted by the Act. Cannabis leaf, resin and oil have been excluded from the application of the legislation.<sup>710</sup> In the second reading speech, the Attorney General explained that these substances were excluded because they “are not usually a feature of the drug premises that the bill is aimed at”.<sup>711</sup> Some police have been critical of the exclusion of cannabis from the Act.

In this chapter, we will examine the level of drug supply that the Drug Premises Act appears to be targeting. It is important to note, however, that NSW Police have in most instances only provided information about uses of the Act where charges have been laid.<sup>712</sup>

## 8.1. Organised and professional criminals and high level drug supply

Assessing the level of drug supply that the Drug Premises Act is targeting was an important research question for this review. However, before considering the data that we have collected to examine this question, it is worthwhile outlining the methodological issues that arise in assessing the level of drug supply that is being targeted.

While an important objective of the Drug Premises Act was to target major and organised criminals operating drug premises, there are no clear, consistent definitions of what constitutes an offender of this type. The terms organised crime and organised criminal are rarely defined in media or public debate, or by law enforcement agencies themselves.<sup>713</sup> A recent article made this point, and noted the difficulties of categorising particular types of criminal activity as organised crime:

*Organised criminals are offenders who possess a reasonable degree of skill and organisational ability and may share a cultural orientation with co-offenders (Sterling 1991; Hobbs 1994). Whether their offending should be labelled organised crime is open to debate. Certainly some drug criminals have described themselves as participating in organised crime when they were organised only to the extent that they had engaged in some planning and negotiation to transport and sell the drugs (Ovenden et al 1992).<sup>714</sup>*

There was a consensus among several senior police we spoke to for this review that the operation of drug premises constituted a form of organised criminal activity. One senior officer from the Cabramatta LAC said that “the drug premises do require a certain amount of organisation, because you need to have access to the unit in the first place, particularly to lease them”.<sup>715</sup> The commander of the Drug Squad had a similar view, and believed that those who operate drug premises were doing so to earn a living from it:

*If someone is going to go to the trouble to operate a drug house, within its definition, I think then by definition, that person is an organised criminal, they're showing that they have given some considerable thought to how to get around law enforcement intervention and make things difficult, they are not just doing it just to support a habit, it is people who are making a livelihood out of selling drugs. Just as I do my job, and put processes in place and do things to make sure things operate efficiently and problems don't occur for me, these people do the same, they put systems in place.<sup>716</sup>*

According to this definition, all of those people who operate drug premises are organised criminals.

<sup>708</sup> See chapter, “Offences in the Drug Premises Act” for a discussion of the reversal of the onus of proof in several offences in the Act.

<sup>709</sup> Ms M. Moore, NSWPD, 6 June, p. 14507. Ms Moore, MLA, also recommended changes to the Bill that aimed to provide additional safeguards to the powers contained in the legislation.

<sup>710</sup> *Police Powers (Drug Premises) Act*, s. 3.

<sup>711</sup> The Hon R. Debus, second reading speech, NSWPD, 30 May 2001, p. 13998.

<sup>712</sup> Two LACs that we audited advised us of instances in which a Drug Premises warrant was executed, but no charges were laid. The limitations in the information provided to us for this review are discussed in the Chapter, “Methodology”.

<sup>713</sup> Lorraine Beyer, “Organised crime and illegal drug importation: challenges in analysis”, *Journal of the Australian Institute of Professional Intelligence Officer*, Vol. 10 No 2, 2002.

<sup>714</sup> *Ibid.*

<sup>715</sup> Interview, former crime manager, Cabramatta LAC, 21 August 2003.

<sup>716</sup> Interview, Commander, Drug Squad, 30 September 2003.

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## 8.2. Levels of drug offending

Similarly, there are no consistent definitions of what constitutes the various levels of the drug trade. There is also relatively little known about the characteristics of different types of drug market participants. One notable exception is the research on the street level drug trade in Cabramatta.<sup>717</sup> Research is currently underway into the characteristics of heroin importers in Australia, and it is the first of its kind.<sup>718</sup>

Supply in the illicit drug market is often conceived of as taking place at various levels. These levels are understood to reflect the stage or part of the illicit drug supply process that the drug market participant is involved in. Probably the most common model of the structure of the drug trade is three-tiered, separating drug supply into low, medium or high level.<sup>719</sup> One senior officer we interviewed for this review also spoke of the drug trade as consisting of three levels.<sup>720</sup> According to this officer, high level involved importation and organised crime syndicates, middle level was ad hoc in its structure and consisted of informal syndicates, and “low level ... are your street dealers, which are often themselves addicts”.<sup>721</sup>

Research conducted by the National Police Unit just over a decade ago found that within NSW Police, and in law enforcement agencies across Australia, there were discrepancies in how major players in the drug trade were defined:

*These discrepancies both within agencies and between them indicate that the definition of “major player” is very flexible and can be extended by some officers to include street and area dealers. This apparent re-defining of seriousness may have significant consequences in terms of the organisational goals set for each of the specialist drug enforcement agencies and may be reflected in the continued high rates of detection and apprehension of relatively minor drug offenders by these agencies.*<sup>722</sup>

Interviews conducted for this review, and submissions received from NSW Police to our discussion paper, suggest that this may still be the case. When interviewed for this review, the commander of the Drug Squad questioned the usefulness to operational police of defining particular levels of the drug trade. He also discussed the difficulties of determining what constitutes a particular level of the illicit drug trade:

*Well, you can break [drug market participants] into three groups, you can break them into four groups, you can break them into five groups. Is there one person who imports it who hands it to the person who receives it, who hands it the person who cuts it, to the person who supplies it? No, there are a lot more “hands” in between. Three layers, I suppose, it’s a reasonably simplistic way to describe it.*<sup>723</sup>

He also noted that the structure of the drug trade differs according to the drug that is being supplied.

## 8.3. How has the level of drug supply being targeted by the Drug Premises Act been assessed?

While there is an absence of definitions of the various levels of the drug trade, one of the ways that the Drug Misuse and Trafficking Act, the principal drug legislation in New South Wales,<sup>724</sup> characterises the seriousness of different types of drug offending is according to the quantity of the prohibited drug that is involved in an offence. In that Act, graduated penalties relating to the quantity of the prohibited drug are set down: offences involving larger quantities of prohibited drugs attract more serious penalties than those involving smaller quantities.<sup>725</sup> The table below sets out the quantities stipulated in the Drug Misuse and Trafficking Act that relate to prohibited drugs commonly found on drug premises.

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<sup>717</sup> Lisa Maher, David Dixon, Michael Lynskey and Wayne Hall, *Running the Risks, Heroin, Health and Harm in South West Sydney*, National Drug and Alcohol Research Centre University of New South Wales NDARC Monograph No. 38, 1998.

<sup>718</sup> This research is being conducted by Lorraine Beyer.

<sup>719</sup> This model appears to have wide currency. NSW Police also used this model in its submission to our discussion paper, and several senior police who we interviewed for this review also referred to the drug trade in this way.

<sup>720</sup> Interview, former crime manager, Cabramatta LAC, 21 August 2003.

<sup>721</sup> Ibid.

<sup>722</sup> P. Green and I. Purnell, *Measuring the success of law enforcement agencies in Australia in targeting major drug offenders relative to minor drug offenders*, National Police Research Unit, Payenham, 1995, p. 35.

<sup>723</sup> Interview, Commander, Drug Squad, 30 September 2003.

<sup>724</sup> Supply, possession, and a number of other offences relating to prohibited drugs are contained within the *Drug Misuse and Trafficking Act*.

<sup>725</sup> Peter Zahra, Robert Arden, Mark Lerace and Beverly Schurr, *Drug Law in New South Wales, Second Edition*, Federation Press, Sydney, 1999, p. 3.

**Table 18. Drug Misuse and Trafficking Act, quantity of key drug types**

Drug type	Small quantity	Traffickable quantity	Indictable quantity	Commercial quantity	Number
Amphetamine	1 gram	3 grams	5 grams	250 grams	1000 grams
Cocaine	1 gram	3 grams	5 grams	250 grams	1000 grams
Heroin	1 gram	3 grams	5 grams	250 grams	1000 grams
Methylamphetamine	1 gram	3 grams	5 grams	250 grams	1000 grams

Source: Drug Misuse and Trafficking Act, Schedule 1

To provide a gauge of the level of drug supply targeted by the Act, we have set out below data on the quantities of drugs located on identified drug premises in each of the regions in NSW. We have also included data on amounts of money seized from premises. Large amounts of money that are not accounted for by the owner or occupier of the premises are one of the indicia of drug premises in the Act.<sup>726</sup>

There are several caveats to the interpretation of the quantities of drugs found on drug premises. As we have noted elsewhere in this report, the difficulties reportedly encountered by police because drugs were destroyed prior to their entry were a key reason why the Drug Premises Act was introduced. For this reason, an absence of prohibited drugs on premises may not reflect a lack of, or minimal involvement in, illicit drug supply.

Another difficulty with using the quantity of drugs found on premises as a gauge of the level of drug supply is that some premises may only hold relatively small quantities of drugs at any one time, but may have a high turnover. Clearly, the risks involved for the drug supplier in terms of the penalties they may receive if they are apprehended increase as the quantity of drugs kept on the premises increases. Therefore, a small quantity of drugs does not necessarily signify minimal involvement in drug supply.

At the same time, however, it is also worth noting that seizing large quantities of drugs may not unambiguously reflect the seriousness of offending. For instance, research conducted in prisons in the United Kingdom found that many drug couriers had minimal experience of the drug trade, and were mules or pawns for other people.<sup>727</sup> This research, according to an Australian study that considered ways of measuring the success of drug law enforcement:

*... cautions strongly against relying on length of sentence, nature, amount, purity and estimated street value of a drug, national identity of importer or offence category in assessing the seriousness of a drugs offender.*<sup>728</sup>

### 8.3.1. Assessing the impact of the Drug Premises Act on drug supply

Assessing the overall impact on the drug trade of a single law enforcement strategy on drug supply, such as closing down drug houses under the Drug Premises Act, is not possible. At any one time, a number of drug law enforcement strategies will be operating in areas that are known for illicit drug activity. Isolating the impact of a single law enforcement strategy would be an extremely complex task and one beyond the scope of the resources of this review.

Another factor which makes it difficult to assess the impact of legislation on the drug trade, as researchers in the area have pointed out, is that the recorded rate of drug offences is more a measure of police activity than an indicator of the actual rate of offending.<sup>729</sup> Drug offences, unlike other forms of criminal activity such as burglary or car theft, are not generally reported to police. A drop in the recorded rate of drug offending may reflect a decrease in policing activity rather than a decrease in drug offending. Therefore, while it is possible to measure the level of drug supply the law appears to be targeting, and we have set out the relevant data below, we have not attempted to measure the overall impact of the Drug Premises Act on drug supply.

<sup>726</sup> *Police Powers (Drug Premises) Act*, s. 11 (g).

<sup>727</sup> Research conducted by P. Green, quoted in P. Green and I. Purnell, *Measuring the success of law enforcement agencies in Australia in targeting major drug offenders relative to minor drug offenders*, National Police Research Unit, Payenham, 1995, p. 5.

<sup>728</sup> P. Green and I. Purnell, *Measuring the success of law enforcement agencies in Australia in targeting major drug offenders relative to minor drug offenders*, National Police Research Unit, Payenham, 1995, p.5.

<sup>729</sup> For further discussion on assessing the effectiveness of drug law enforcement, see Don Weatherburn, "Performance Indicators for Drug Law Enforcement", New South Wales Bureau of Crime Statistics and Research, Sydney, *Crime and Justice Bulletin*, No. 48, 2000.

## 8.4. Discussion paper responses about the level of drug supply being targeted by the Act

Many respondents to our discussion paper, including the New South Wales Legal Aid Commission, the Law Society of New South Wales, drug advocacy groups and health professionals, believed that the Drug Premises Act was not targeting high-level drug supply. The Law Society of New South Wales argued that the “reality is that drug users and low-level street dealers, who are themselves drug users, are being targeted by the provisions” of the Act.<sup>730</sup>

Family Drug Support, an organisation that offers support for families affected by drug use, also commented that the powers in the Act did not effectively capture “major and organised criminals.”<sup>731</sup> According to the NUAA the types of drug premises that were reportedly being targeted also suggested that the law was not focusing on high level drug supply.<sup>732</sup> Commenting on the descriptions of drug premises that were provided in Cabramatta Report on Progress,<sup>733</sup> the NUAA submission noted that these descriptions were indicative of “lower level shooting rooms and houses where smaller amounts of drugs are sold and used”.<sup>734</sup> NUAA also argued that lower numbers of charges for the offences of organising or conducting and allowing a premises to be used as a drug premises “could indicate that the smaller time users and user dealers are being targeted.”<sup>735</sup>

The NSW Legal Aid Commission argued that the size of the penalties for offences under the Act and the “low standard of proof required”,<sup>736</sup> evidenced that the Drug Premises Act was “never intended to target high level involvement in the drug trade”.<sup>737</sup> The custodial penalties for the three key offences created by the Drug Premises Act are a maximum one year’s imprisonment for a first offence, and five years for a second offence.<sup>738</sup> The NSW Legal Aid Commission expressed the view that where there is more serious involvement, police operations are directed toward the detection of offences such as the on-going supply of drugs under the Drug Misuse and Trafficking Act, which carries a maximum penalty of twenty years.

Family Drug Support also raised the issue of the resources required to use the Act. They expressed concern that substantial police resources appeared to be involved in using the Drug Premises Act, and that “such a high level of activity would be better directed in other areas of drug detection.”<sup>739</sup>

NSW Police were also of the view, as we discuss more fully later in this chapter, that the Drug Premises Act may be more effective against medium and low level suppliers, as “high level suppliers ... are unlikely to risk police scrutiny by allowing their premises to be used for supply”.<sup>740</sup>

### 8.4.1. Police views on the level of drug supply that the Drug Premises Act is targeting

In its submission, NSW Police stated that they believed the powers in the Act may be “more effective against medium and low level suppliers”.<sup>741</sup> The submission also noted that high level suppliers are “unlikely to risk police scrutiny by allowing their premises to be used for supply.”<sup>742</sup> A number of police we spoke to in the course of this review also made this point.

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<sup>730</sup> Submission, Law Society of New South Wales, 20 August 2003.

<sup>731</sup> Submission, Family Drug Support, 31 July 2003.

<sup>732</sup> Submission, New South Wales User and Aids Association, received 5 August 2003. In their submission, the New South Wales Users and Aids Association describe themselves as a “peer-based community organisation of people who use drugs illicitly and their friends and allies”.

<sup>733</sup> NSW Government, *Cabramatta Report on Progress*, April 2002.

<sup>734</sup> Submission, New South Wales User and Aids Association, received 5 August 2003. NUAA’s comments on these descriptions of drug premises are set out in more detail in the Chapter on the use of the Drug Premises Act in Cabramatta.

<sup>735</sup> *Ibid.*, received 5 August 2003.

<sup>736</sup> The NSW Legal Aid Commission appear to be referring to the reversal of the onus of proof in respect of the Drug Premises Act offences of being found on, entering or leaving drug premises, and the offence of organising, assisting or conducting drug premises. The reverse onus of proof is discussed in the Chapter, “Drug Premises Offences”.

<sup>737</sup> Submission, NSW Legal Aid Commission, 30 July 2003.

<sup>738</sup> These penalties are for the offences of being on, entering or leaving drug premises, allowing use of premises as drug premises, and organising drug premises, under sections 12, 13 and 14 of the Drug Premises Act respectively. These first and second offences may also be punishable by a fine of \$5500 or \$55000.

<sup>739</sup> Submission, Family Drug Support, 31 July 2003.

<sup>740</sup> Submission, NSW Police, received 12 August 2003.

<sup>741</sup> *Ibid.*

<sup>742</sup> *Ibid.*

Low level drug suppliers are more likely to sell small quantities of drugs to a number of people. The activity associated with drug supply at this level can often attract the attention of neighbours and police. Large numbers of people coming and going from a house appear to be one of the most common indicators of drug premises. We have recommended that this be included as indicia of drug premises in the Act.<sup>743</sup> Two of the six indicators that NSW Police reported were most commonly used to define drug premises related to the presence of people near the drug premises were:

- the regular attendance at the premises by known drug users and
- the number of drug affected people in the vicinity.<sup>744</sup>

Another of the six indicators noted in the NSW Police submission was the “ability to use evidence provided by members of the public.”<sup>745</sup> Some police officers we spoke to said that neighbours sometimes noticed a constant stream of people coming to a premises and passed the information on to police.

While not referring specifically to those involved in drug premises, the commander of the Drug Squad was also of the view that people who are supplying smaller quantities of drugs on the street are more likely to be apprehended by police than those at the high end of the drug market. When interviewed for this review, he explained why he thought this was the case:

*People at the high end, doing the importations, are highly sophisticated and familiar with the police methodology and how to get around law enforcement, otherwise it [the illicit drugs] wouldn't be here. So the chances of them getting caught are probably reasonably ... small compared to the person who sells half weights and street deals of drugs on the street - right at the domain of where visible policing exists. They have a greater chance of getting caught. They are almost certainly using the drug which brings them under police notice anyway, and they're probably committing other crimes as well, so they've got a much greater chance of being detected by law enforcement.<sup>746</sup>*

Another senior officer experienced in drug law enforcement told us that:

*The upper level market can insulate itself fairly well ... they are long proactive operations, you need specialist police, because they can put an insulation around them ... they are not dealing directly with the punter ... they are not exposing themselves because they dealing in house.<sup>747</sup>*

Police at the LAC level also said that resource availability impacted on their ability to target high level drug supply. In relation to the use of the Act in Cabramatta, for example, one senior officer said drug law enforcement conducted by officers in the command only operated at the lower to maybe medium level and that they would not have been able to maintain the pace of their operations had they focused on higher level drug supply as well.<sup>748</sup> This officer also said that that the command would require the assistance of the State Crime Command to target individuals at the high level.<sup>749</sup>

A former commander of Cabramatta LAC said that street level dealing was a key priority, and “in some cases, middle level dealing”.<sup>750</sup> However, while the former commander said that police in Cabramatta were busy dealing with street level drug supply, he believed that they had affected higher levels of the drug trade:

*... we had a major street drug dealing, street level, visible scene, so if that was given some attention and make it difficult for them to operate, and make it a hostile environment, then the next level up after that, would suffer, would starve, if you like. But I suppose we were so busy with that other one, that to actually penetrate the next one up, I think we affected the next one up, I think that's where the disruption comes into it, you might not necessarily arrest them all the time, but you create difficulties for them, sometimes expose them.<sup>751</sup>*

## 8.5. The use of the Drug Premises Act to target drug supply

Over the review period, the Drug Premises Act was used in relation to 141 premises in NSW. Most uses of the drug premises legislation, a total of 95, were targeted by LACs in Sydney, while 28 were by LACs in regional NSW. The Drug Squad, and other specialist law enforcement agencies,<sup>752</sup> targeted 18 drug premises in various parts of NSW over the review period. The table below shows the proportion of uses of the Act by each police region, and the State Crime Command.

<sup>743</sup> See Chapter, “Definition of Drug Premises”.

<sup>744</sup> Submission, NSW Police, received, 12 August 2003.

<sup>745</sup> Ibid.

<sup>746</sup> Interview, Commander, Drug Squad, 30 September 2003.

<sup>747</sup> Interview, former Commander, Cabramatta LAC, 22 August 2003.

<sup>748</sup> Interview, former crime manager, Cabramatta LAC, 21 August 2003.

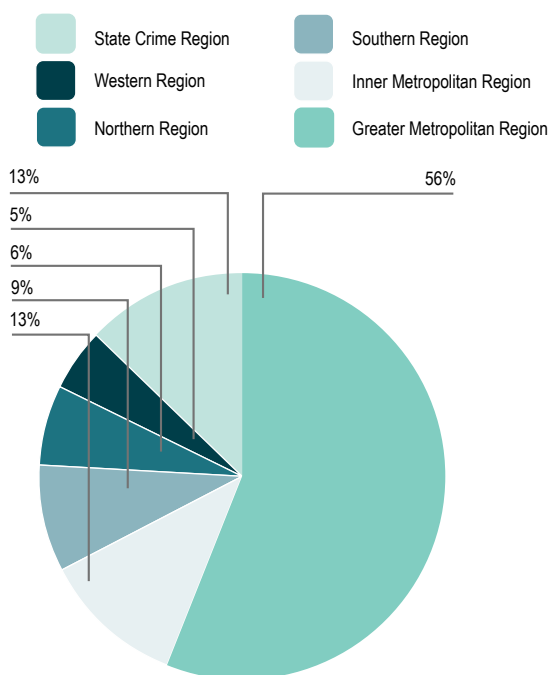
<sup>749</sup> Ibid.

<sup>750</sup> Interview, former Commander, Cabramatta LAC, 22 August 2003.

<sup>751</sup> Ibid.

<sup>752</sup> Sixteen of the uses of the Act were by the State Crime Command, one use of the Act was an operation that involved officers from both the State Crime Command and the Police Integrity Commission (PIC), and on another occasion, Special Crime and Internal Affairs (SCIA) laid charges under the Drug Premises Act.

**Figure 19: Drug premises in NSW, 1 July 2001- 30 June 2003, by regions and the State Crime Command**



Source: COPS event narratives.

### 8.5.1. The closure of drug premises

It is difficult to determine how many of the 141 drug premises were closed down over the review period. There is evidence to suggest that a small number of drug premises continued to operate after police had taken action against them. In respect of two drug premises, one in the Greater Metropolitan Region<sup>753</sup> and one in the Inner Metropolitan Command,<sup>754</sup> police executed search warrants and laid charges under the Drug Premises Act on two separate occasions over the review period.

On another occasion, also in the Greater Metropolitan Region, police proceeded against the occupants of a drug premises twice, at two separate premises.<sup>755</sup> After the first occasion on which police used the Drug Premises Act, the occupants were evicted. They then moved to another unit in the same block, and established a second drug premises. About six weeks after the first search warrant was executed, police executed a search warrant at the new premises, and again laid charges under the Act.<sup>756</sup>

<sup>753</sup> Cabramatta LAC, Drug Premises Incidents 3 and 5.

<sup>754</sup> Inner Metropolitan Region, Drug Premises Incidents 1 and 2.

<sup>755</sup> Greater Metropolitan Region, Drug Premises Incidents 25 and 26.

<sup>756</sup> Greater Metropolitan Region, Drug Premises Incident 26.

<sup>757</sup> These and other characteristics of drug premises are discussed more fully in the chapter, "Definitions and Types of Drug Premises".

<sup>758</sup> Campbelltown Children's Court, *Police v [defendant's name]*, 8 April 2002, p. 2.

<sup>759</sup> COPS event narrative, Greater Metropolitan Region, Drug Premises Incident 28.

<sup>760</sup> Ibid.

### 8.5.2. Organised criminal activity at drug premises

As noted previously, there are no clear definitions of what constitutes an organised criminal. However, there was some evidence that some people who were involved in drug premises were, to varying degrees, organised. This organisation took a variety of forms. A degree of organisation was sometimes evident in the method that was used for conducting drug transactions. In other instances, aspects of drug manufacture or supply operations suggested that a business-like approach had been applied to these illicit activities.

Some drug premises also had devices such as CCTV cameras that police believed operated to warn the occupants of their approach. Several premises had police scanners that were tuned to the local police frequency. Fortifications or other devices that police believed were to protect illicit drug activity, ranging from a wire cage over a balcony to pit bull terriers, may also reflect a level of organisation.<sup>757</sup>

Other types of organised activity at drug premises related to the way that drug transactions were conducted. One drug supplier in Cabramatta, a sixteen year old male, devised a novel method of conducting drug transactions that involved a coke can and a piece of string. At court, the young person's lawyer described the methodology employed by his client in the following way:

*The drug transactions were like something out of a comic movie, lowering - you may remember they were lowering a soft drink tin down from a window on a piece of string as though in some way the Police Service of New South Wales was going to be deluded to think they were selling Coke or something, it's just laughable, stupid if it wasn't so serious. That's the sort of thing my client had got himself involved in.*<sup>758</sup>

A similar methodology was employed at another drug premises in western Sydney using a tennis ball. According to the event narrative about this incident, the occupant told police that when drug purchasers attended his unit block after a sale had been arranged over the phone, he inserted the "ordered drugs"<sup>759</sup> in the tennis ball, which he had cut a split into and:

*... would throw the tennis ball from his balcony to the buyer on the footpath below. The buyer would then remove the drugs from the tennis ball and replace it with money, before returning the tennis ball to the defendant whilst on the balcony.*<sup>760</sup>



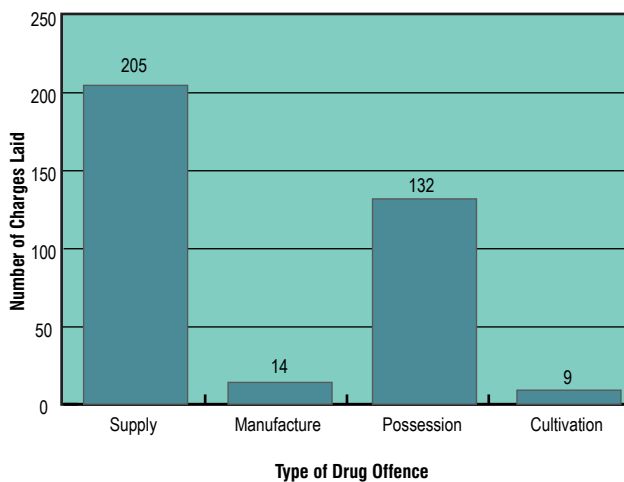
Other forms of organisation in evidence on drug premises concerned the application of a business like approach to aspects of illicit drug manufacture or supply. This is particularly evident, for example, in a syndicate involved in drug manufacture and supply on the South Coast of NSW, discussed later in this chapter.

In other cases, some aspects of the way illicit drug supply was conducted suggested a business like approach had been adopted. For example, at the drug premises mentioned above at which a tennis ball was utilised, several types of drugs<sup>761</sup> and bundles of money were found in a combination safe fitted into the floor of the defendant's bedroom. The occupant of the premises told police that he placed money from sales of different drug types in the safe, and placed them in separate bundles in order to "segregate the differing amounts of money received for each particular drug type."<sup>762</sup> Several bundles labelled "Ghosts" and "Hearts", which are types of ecstasy, were found stashed in pencil cases and other types of containers. Police also found two diaries at the premises, one recorded the drugs that had been supplied to the occupant, and the other recording drugs that had been sold.<sup>763</sup>

### 8.5.3. Supply, manufacture and possession of prohibited drugs

Another source of data on the extent to which the Drug Premises Act has assisted police to deal with drug supply is the number of charges laid under the Drug Misuse and Trafficking Act against people who were involved in drug premises. Over the review period, charges were laid under this Act for offences such as supply, possession and the manufacture of prohibited drugs. The graphs below show the number of charges laid for these types of drug offences in each of the region commands.<sup>764</sup> Several charges were also laid for possession offences under the Poisons and Therapeutic Goods Act 1966 (*Poisons and Therapeutic Goods Act*) that regulates and controls the supply and distribution of pharmaceuticals and poisons. These charges are also included in the figures for possession charges in the graphs below.

**Figure 20: State-wide drug charges laid against persons found on drug premises, under the Drug Misuse and Trafficking Act, and the Poisons and Therapeutic Goods Act, 1 July 2001 to June 30 2003.**



Source: NSW Police Data extracted from the COPS database, July 2003.

### 8.5.4. Drug types and quantities of prohibited drugs

We have set out below the quantities and types of drugs seized by police on identified drug premises across the state. The main source of this information was event narratives and, for those LACs we audited, search warrant documents.<sup>765</sup>

A prohibited drug is any substance included in Schedule 1 of the Drug Misuse and Trafficking Act.<sup>766</sup> Prohibited drugs found on drug premises include heroin, cocaine, ecstasy and methylamphetamine. A precursor can be defined as a substance "intended ... for use in the manufacture or production"<sup>767</sup> of a prohibited drug. One example of a precursor is pseudoephedrine, which can be used to manufacture prohibited drugs like methylamphetamine.<sup>768</sup> A prescribed restricted substance is a substance that is regulated by the Poisons and Therapeutic Goods Act, and includes substances like testosterone.<sup>769</sup>

The tables show the number of times a particular drug was located, the highest and lowest quantities of each drug type drugs found in each of the five NSW Police regions.

<sup>761</sup> According to the event narrative relating to this incident, 580 ecstasy tablets, 11.4 grams of amphetamines and 52.8 grams of cannabis. COPS event narrative, Drug Premises Incident 23.

<sup>762</sup> COPS event narrative, Greater Metropolitan Region, Drug Premises Incident 28.

<sup>763</sup> In the Chapter, Definitions and Types of Drug Premises, we discuss other types of documents that police believed were associated with illicit drug manufacture or supply.

<sup>764</sup> Drug charges laid by the State Crime Command are included in this data.

<sup>765</sup> In respect of those LACs we audited, data on drug quantities and types has been cross checked with descriptions of drugs seized in Property Seizure Exhibit Forms, where they were provided.

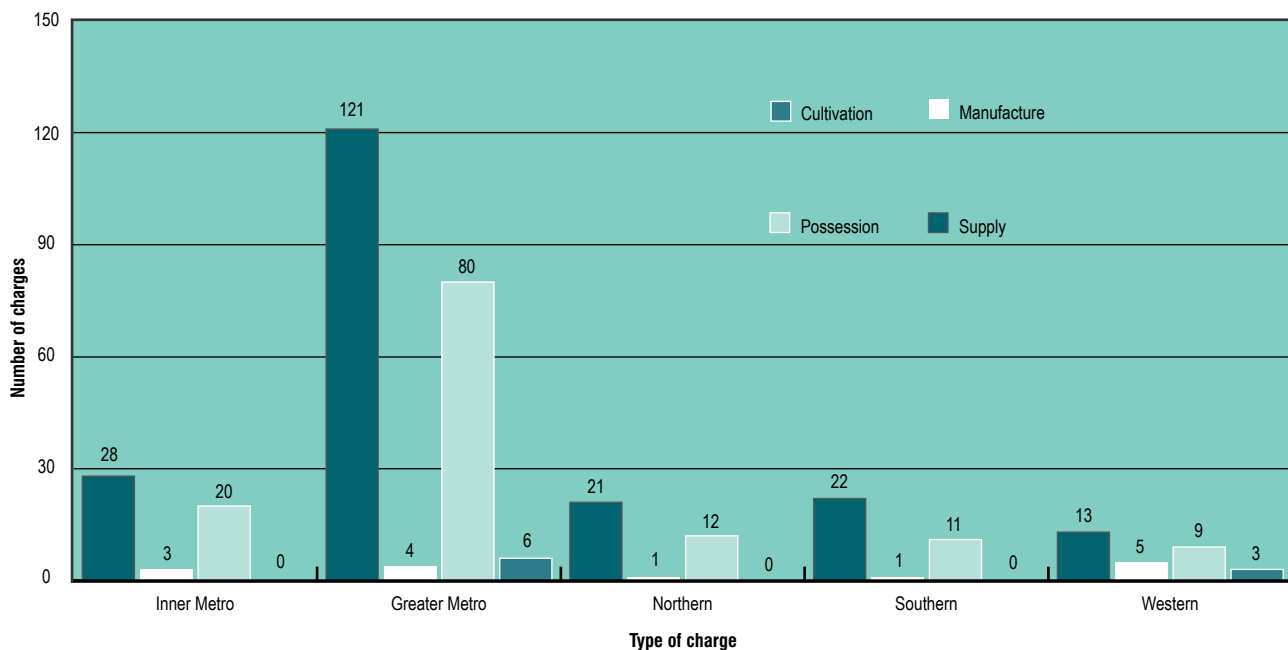
<sup>766</sup> *Drug Misuse and Trafficking Act*, s. 3.

<sup>767</sup> *Drug Misuse and Trafficking Act*, s 24A. A precursor is a substance referred to in Appendix C of the *Poisons and Therapeutic Goods Regulation* 1994.

<sup>768</sup> Precursors are listed in Appendix C of the *Poisons and Therapeutic Goods Regulation* 1994.

<sup>769</sup> *The Poisons and Therapeutic Goods Act* 1996 regulates and controls the supply and distribution of pharmaceuticals and poisons.

**Figure 21: State-wide drug charges laid against persons found on drug premises, under the Drug Misuse and Trafficking Act, and the Poisons and Therapeutic Goods Act, 1 July 2001 to June 30 2003.**



Source: NSW Police Data extracted from the COPS database, July 2003.

There are several limitations on this data:

- police are required to weigh drugs in the container, such as a foil or bag, in which they are found. Therefore, the drug weights below are likely to be an over-estimate of the actual quantity of the prohibited drug seized<sup>770</sup>
- drug types are based on police assessments and may not be accurate<sup>771</sup>
- some data on drug weights and types<sup>772</sup> was not included in event narratives. In other cases, police did not record drug type they suspected it was. We have directly transcribed the information provided by police. There are some instances in which a drug find is described, for example, as “28 foils” or “white rock substance” rather than as a known drug type. These are listed in the tables below as “other quantified measurements (not in grams)”.

Quantities of cannabis found on drug premises are also included in the tables below, though the use of premises for the supply of cannabis and its derivatives cannot be the basis for obtaining a drug premises search warrant, or for laying charges under the Act.<sup>773</sup> Charges for offences relating to cannabis and its derivatives can nonetheless be laid under the Drug Misuse and Trafficking Act against people found on premises.

In the Appendix of this report, we have set out data on the drug seizures made from each identified drug premises in NSW over the review period.

### 8.5.5 Prohibited drugs seized on drug premises in NSW

The table below shows the quantities of particular types of prohibited drugs that were seized on drug premises over the two year review period.<sup>774</sup>

<sup>770</sup> In the *NSW Police Service Handbook*, police are advised that the exhibit officer “estimates the weight of the container and assesses the net weight of the drug.” Police are also advised to weigh the empty drug bag and take its weight into account, and if an assessment of the drug weight is not able to be made, police are instructed to “seek help from a more experienced officer”. *NSW Police Service Handbook*, “Prohibited Drugs and Plants”, p. 18.

<sup>771</sup> Information about drugs seized in Property Seizure Exhibit Forms, for example, is recorded before a drug has been sent for analysis (though drugs are not always sent for analysis).

<sup>772</sup> Missing or incomplete data on drug types or quantities was checked in respect of those LACs we audited. Police were usually able to provide the additional information we requested, and this has been included.

<sup>773</sup> *Police Powers (Drug Premises) Act*, s. 3. If police only find cannabis on premises, however, they may lay charges for cannabis-related offences that are contained the *Drug Misuse and Trafficking Act*, such as the possession, supply or cultivation of prohibited plants in section 23 of that Act.

<sup>774</sup> Drugs located in uses of the Act by the State Crime Command are included in this graph.

**Table 19. Drugs Located, State-wide, 141 instances**

Drug type	Total Incidents of Drug Seizures	Quantity of Drugs Seized (grams unless specified)	Average (grams) <sup>775</sup>
Heroin	39	5956.4	23.96
Cocaine	13	245.18	0.9
Ecstasy	25	142.83 + 9149 tablets	1.16
Amphetamine	26	524.06	3.86
Cannabis	62	3403.8 + 43 plants + 600 seeds + 25 bags	24.89
Other	36	213.05 white powder/rock substance, 3059 tablets	3.05

Source: COPS event narratives and search warrant documents

In the tables below, we have set out the quantities of each particular drug type seized in each region.<sup>776</sup>

### 8.5.6. Prohibited drugs located on drug premises in the Greater Metropolitan Region

Drugs were located on 62 occasions,<sup>777</sup> or nearly 80%, of the instances in which the Drug Premises Act was used in this region.

**Table 20. Drugs located, Greater Metropolitan Region**

Drug type	Total Incidents of Drug Seizures	Quantity of Drug Seizures (grams)	Quantity of Drugs Seized (not measured in grams)	Lowest Amount (grams)	Highest Amount (grams)
Heroin	25	2136.21	28 foils	0.06	1720
Cocaine	9	108.27	0	0.26	71
Ecstasy	6	39.8	599.5 tablets	5.4	34.4
Amphetamine	13	325.06	0	2.74	90.1
Methadone	3	0	9 bottles	N/a	N/a
Cannabis	33	1509.79	34 plants, 550 seeds, 12 bags leaf, 1 foil stick, 3 capsules of cannabis oil	0.23	315.7
Other	22	143.91	2251 tablets, 13 foils of white powder, 1 vial stanzanol, 2 tabs LSD	0.4 paracetamol	71.2 white powder

Source: COPS event narratives and search warrant documents

<sup>775</sup> The "average" has been calculated by including those incidents in which no prohibited drugs were located and only those incidents that are quantified in grams.

<sup>776</sup> Drugs located by State Crime Command are not included in each of the tables for each Police Region. Data on drugs located by State Crime Command is presented later in this chapter.

<sup>777</sup> Finds of drug residue have not been included.

### 8.5.7. Quantities of prohibited drugs found on premises in the Inner-Metropolitan Region

On 14 occasions, or about 87% of the time, prohibited drugs were located on premises in the Inner Metropolitan Region. On 3 of these 14 occasions, cannabis was the only prohibited drug located.

**Table 21. Drugs located, Inner Metropolitan Region, 16 incidents**

Drug type	Total Incidents of Drug Seizures	Quantity of Drug Seizures (grams)	Quantity of Drugs Seized (not measured in grams)	Lowest Amount (grams)	Highest Amount (grams)
Heroin	5	7.63	0	0.33	3.3
Cocaine	1	11.48	0	0	11.48
Ecstasy	1	0	61 tablets	N/a	N/a
Amphetamine	1	37	0	0	37
Cannibis	9	316.31	8 small bags cannabis, 5 small quantities, 1 green tablet	0.41	201
Other	4	123.1 white powder	117 – 135 bags white powder	16.1	107

Source: COPS event narratives and search warrant documents

### 8.5.8. Quantities of prohibited drugs found on premises in the Western Region

On 6 of the 7 occasions on which the Drug Premises Act was used, prohibited drugs were located. On one of these 6 occasions, cannabis was the only prohibited drug located.

**Table 22. Drugs located, Western Metropolitan Region, 7 incidents**

Drug type	Total Incidents of Drug Seizures	Quantity of Drug Seizures (grams)	Quantity of Drugs Seized (not measured in grams)	Lowest Amount (grams)	Highest Amount (grams)
Heroin	0	0	0	0	N/a
Cocaine	0	0	0	0	N/a
Ecstasy	0	0	0	0	N/a
Amphetamine	3	8.77	0	0.47	8.3
Cannibis	2	0	9 plants	0	N/a
Other	2	53.04 white powder	0	23.04	30

Source: COPS event narratives and search warrant documents

### 8.5.9. Prohibited drugs located Northern Region

On 7 of the 9 occasions in which the Drug Premises Act was used in the Northern Region, prohibited drugs were located.

**Table 23. Drugs located, Northern Region, 9 incidents**

Drug type	Total Incidents of Drug Seizures	Quantity of Drug Seizures (grams)	Quantity of Drugs Seized (not measured in grams)	Lowest Amount (grams)	Highest Amount (grams)
Heroin	5	11.5	4 small bags	2	5.6
Cocaine	0	0	0	0	N/a
Ecstasy	0	0	0	0	N/a
Amphetamine	1	4	0	0	4
Methadone	1	0	5 vials	0	N/a
Cannabis	5	25	5 small bags cannabis	3	22
Other	2	0	5 small bags white powder	0	N/a

Source: COPS event narratives and search warrant documents

### 8.5.10. Drugs located in the Southern Region

On 7 of the 12 occasions that the Drug Premises Act was used in the Southern Region, prohibited drugs were located. On 1 of these 7 cases, cannabis was the only prohibited drug located.

**Table 24. Drugs located, Southern Region, 12 incidents**

Drug type	Total Incidents of Drug Seizures	Quantity of Drug Seizures (grams)	Quantity of Drugs Seized (not measured in grams)	Lowest Amount (grams)	Highest Amount (grams)
Heroin	0	0	0	0	N/a
Cocaine	0	0	0	0	N/a
Ecstasy	0	0	0	0	N/a
Amphetamine	5	19.8	0	1.5	6.7
Cannabis	5	14.4	50 seeds	2.4	12
Other	1	146 (steroids)	73 tablets	0	146 (steroids)

Source: COPS event narratives and search warrant documents

### 8.5.11. Money located on drug premises

Large amounts of money that are not accounted for by the owner or occupier of the premises are one of the indicia of drug premises in the Act.<sup>778</sup> We have set out the quantities of money that were seized from drug premises in each region below.

#### 8.5.11.1. Greater Metropolitan Region

Money was located on 45 of the 79 drug premises in this region(excluding Cabramatta). Quantities of money found ranged from \$50 to \$7280. On 16 of the 45 premises, the amount of money found was \$500 or less.

<sup>778</sup> Police Powers (Drug Premises) Act, s. 11(g).

### 8.5.11.2. Inner Metropolitan Region

Quantities of money were located on 11 of the 16 identified drug premises in the Inner Metropolitan Region. The quantities of money found ranged from \$80 to \$5190. On six of these 11 premises, the quantity of money found was roughly \$1200.

### 8.5.11.3. Western Region

In one incident in the Western Region, \$645 was located, and in another, \$1000 was located. According to event narratives and documents examined, no money was located on the remaining identified drug premises in this region.

### 8.5.11.4. Northern Region

Money was located on 3 of the 8 identified drug premises in the Northern Region, \$15,780 on one premises, and \$395 and \$705 on two others.

### 8.5.11.5. Southern Region

Police note that they found a total of \$1,518.75 in several defendants on one identified drug premises in the Southern Region. Police do not note any money finds in event narratives that relate to the other 11 identified drug premises in this region.

## 8.6. State Crime Command use of the Drug Premises Act

In NSW Police, specialist drug law enforcement is the province of the State Crime Command Drug Squad.<sup>779</sup> While all operational police in NSW are responsible for drug law enforcement,<sup>780</sup> the Drug Squad is tasked to focus on the more complex and serious cases in this area of law enforcement.

The Drug Squad was established in early September 2002 when the State Crime Command was formed.<sup>781</sup> The Drug Squad is responsible for providing strategic direction for NSW Police in response to illicit drug crime at all levels.<sup>782</sup> The Drug Squad also provides support and assistance in drug investigations that are conducted by LACs.<sup>783</sup>

In this section, we will examine the uses of the Act by the State Crime Command. We will discuss instances in which charges under the Drug Premises Act were laid in investigations where the State Crime Command played a major role.

### 8.6.1. Frequency of the use of the Drug Premises Act by State Crime Command

State Crime Command laid charges under the Drug Premises Act in operations involving 17 drug premises over the review period.<sup>784</sup> On one occasion, Special Crime and Internal Affairs (SCIA) also laid charges under the Drug Premises Act in connection with a drug investigation. In total, the Drug Premises Act was used on 18 occasions by agencies with a specialist law enforcement role. Most of these 18 uses of the Act involved the Drug Squad, or other units within the State Crime Command, like the South East Asian Crime Squad, that have a specialist drug law enforcement role.

According to a submission to our discussion paper from the Drug Squad, the Drug Premises Act has "not played a significant role in Drug Squad strategies targeting high level drug supply".<sup>785</sup> The Drug Squad submission stated:

*The methodology employed by Drug Squad typically involves varying levels of covert electronic and physical surveillance targeting a range of manufacture, cultivation, distribution and supply locations. This legislation has not been used frequently due to the majority of our targets being involved in mid to upper level distribution.*<sup>786</sup>

<sup>779</sup> Other squads in State Crime Command are also involved in drug law enforcement. The South East Asian Crime Squad, for example, investigates "major and organised" crime involving South East Asian communities, and their work may also involve investigating drug importation and distribution. *Police Weekly* Vol 14, No 45, 18 November 2002.

<sup>780</sup> Interview, Commander, Drug Squad, 30 September 2003.

<sup>781</sup> This Command was formerly known as "Crime Agencies". Prior to the formation of the Drug Squad, high level drug investigations were conducted by staff drawn from various units within Crime Agencies, such as the "South East Asian Crime Group".

<sup>782</sup> State Crime Command, Marco Organisation Chart/Role and Function Statements (ABEF), 24 September 2002, p. 21.

<sup>783</sup> NSW Police, Standard Operating Procedures, Crime Agencies, August 1998.

<sup>784</sup> COPS database. One of these operations was conducted in conjunction with the Police Integrity Commission.

<sup>785</sup> Submission, NSW Police, State Crime Command Drug Squad, 1 August 2003.

<sup>786</sup> *Ibid.*

However, the submission concluded by noting that “assumptions should not be drawn from the frequency of use by this command, as the deterrent factor will remain regardless of how often it is used”.<sup>787</sup>

According to the Drug Squad’s submission, the Drug Premises Act was intended to address drug supply at the LAC level. It was noted that the provisions in the Act “appear to be more suited to LAC level strategies as it was originally intended”.<sup>788</sup>

### 8.6.2. Level of drug supply targeted when the State Crime Command used the Act

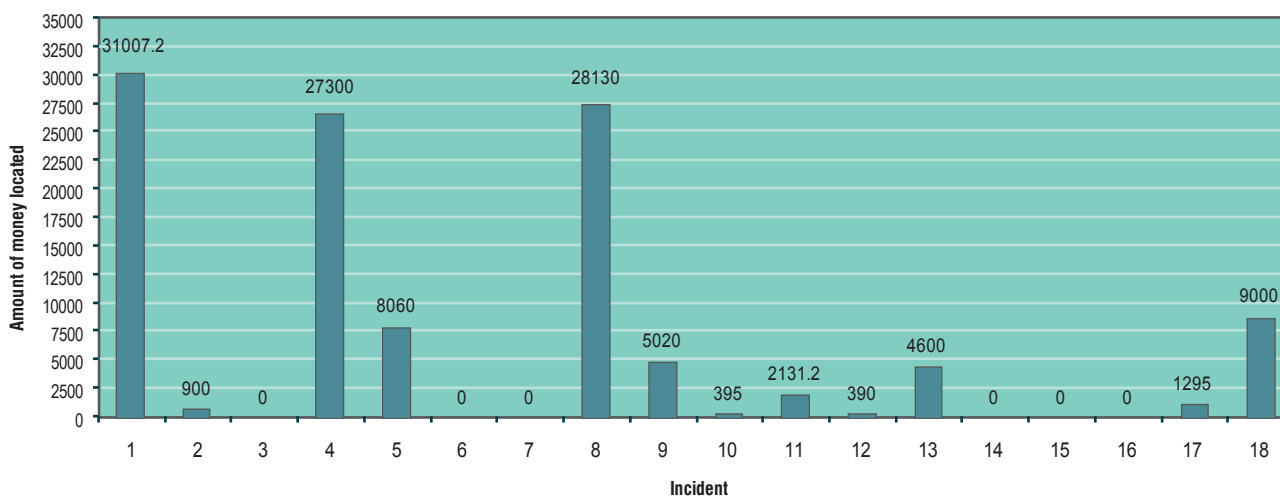
As the tables below indicate, the State Crime Command typically seized larger quantities of money and prohibited drugs than LACs utilising the Drug Premises Act.

As the Drug Squad submission to our discussion paper noted, it was evident that sophisticated methodologies were regularly utilised in drug investigations conducted by the State Crime Command that were very rarely used at the LAC Level. These methodologies included the use of technical surveillance such as telephone intercepts and covert video surveillance.

The table and graph below show the quantities of money and drugs seized when the State Crime Command and SCIA used the drug premises legislation.

Figures on money recovered by State Crime Command only include money that was found on the premises. They do not include, for example, amounts of money that were noted in event narratives as being in off shore accounts held in the occupant’s name.

**Figure 22: Money recovered by State Crime Command in drug premises**



Source: COPS event narratives and search warrant documents. Incidents 4 and 5 relate to uses of the Act by SCIA and the PIC respectively.

The table below shows the quantity and types of prohibited drugs seized when the State Crime Command laid charges under the Drug Premises Act. Drugs were located on 13 occasions in which the Act was used. On one of these 13 occasions, cannabis was the only prohibited drug located.

<sup>787</sup> Ibid.

<sup>788</sup> Ibid.

**Table 25. Drugs located by State Crime Command, 18 incidents**

Drug type	Total Incidents of Drug Seizures	Quantity of Drug Seizures (grams)	Quantity of Drugs Seized (not measured in grams)	Lowest Amount (grams)	Highest Amount (grams)
Heroin	4	822.86	0	10.4	758
Cocaine	1	2.84	0	0	2.84
Ecstasy	10	103.03	254.5 tablets	2.13	87.5
Amphetamine	3	129.66	0	25.1	67.1
Methylamphetamine	5	204.8	5ml in plastic jar	1.7	143
Cannabis	6	1538.3	0	1.4	1500
Other	4	35.39 various chemical substances	741 tablets, 14 bottles steroid, 11 oxymethalone, 3 litres hypophosphorous, 11 small green balloons "hard rock substance"	1	35.39

Source: COPS event narratives and search warrant documents

### 8.6.3. Clandestine laboratories

Chemical Operations, a special division within the Drug Squad, is responsible for all investigations involving clandestine laboratories. In December 2002, the Police Weekly reported that in 2002, the Chemical Operations Team had attended 35 clandestine laboratories. Some of these were small box labs and others were major laboratories.<sup>789</sup>

During the review period, the Drug Squad used the Act on two clandestine laboratories. One of these incidents, which took place in a town on the north coast of NSW, is discussed in the chapter, "Offences in the Drug Premises Act". In a submission to our discussion paper from the Drug Squad, their other use of the Act on a clandestine laboratory, on this occasion in a suburb in western Sydney, was discussed. The submission noted that:

*The broader powers were successfully used in this example under Strike Force [name] putting a reverse onus on persons present at a manufacturing site and providing greater warrant entry options to avoid losing evidence.*<sup>790</sup>

The Drug Squad has anticipated that, in the future, the Drug Premises Act will be used to obtain search warrants for clandestine laboratories.<sup>791</sup>

The State Crime Command was also involved in a long and complex operation in relation to a syndicate which police believed was involved in drug manufacture and supply. This case study is discussed below.

#### Case study 24.

##### High level drug supply

Early in 2001, police from the State Crime Command set up a Strike Force to investigate a syndicate that was operating on the south coast of NSW.

According to police, the syndicate was actively involved in the supply of amphetamine, cocaine and ecstasy. Police investigations focussed on the principal of the syndicate, offender A, and extended out to a network comprised of several of his relatives and associates, and low level dealers and users who bought drugs from members of the syndicate.

<sup>789</sup> Police Weekly, Vol 14, No 47, 2 December 2002 p. 5.

<sup>790</sup> Submission, NSW Police, State Crime Command Drug Squad, 1 August 2003.

<sup>791</sup> Ibid.



To begin with, telephone intercepts were set up on mobile phone services held in offender A's name. During the course of the investigation, over 8,000 telephone calls were intercepted. Police noted that "a large percentage of [the calls] appear to be drug related", and many used code language. Some of these intercepted calls concerned negotiations over the purchase and sale of prohibited drugs, and others related to the purchase of precursors used to manufacture drugs. For example, in one call, offender A discussed the purchase of a kilogram of Sudafed tablets. It became apparent to Strike Force investigators that offender A had a high level of knowledge and expertise in the manufacture, cutting and purity testing of prohibited drugs. According to a police facts sheet, offender A:

*... over the period of the investigation negotiated the purchase of what Police believe to be large amounts of prohibited drugs being Amphetamine, Cocaine and Ecstasy. During these negotiations [defendant's name] appears to take possession of a sample and tests the drug for purity and quality prior to negotiating a purchase price.<sup>792</sup>*

It was also clear that offender A had a thriving business in supplying drugs like cocaine to users on a regular basis. Over a one month period, police noted that the same woman contacted the accused almost on a daily basis and on one occasion, twice daily to arrange the purchase of cocaine. Usually, one gram was purchased each time, at a cost of about \$220. On some occasions, there were several phone calls in which she was very persistent, which led to one transaction. Police estimated that they intercepted in excess of 200 conversations between this woman and the principal offender alone.

Over the course of the investigation, a range of other evidence was gathered against offender A and others, including low level suppliers and other users. One person who police believed was purchasing drugs from offender A was stopped by local detectives on a rural highway after receiving advice from Strike Force officers. Police located one hundred ecstasy tablets in his car. The Strike Force utilised a range of investigative strategies including telephone intercepts and video and physical surveillance to gather evidence of this kind.

## Case study 25.

### The drug premises

Various characteristics of offender A's premises accorded with the indicia of drug premises in the Act, most notably in relation to the security measures at the house. There was a video surveillance camera that monitored the perimeter of the house, and a steel gate that restricted access to the house from the street. This gate was operated by an intercom, and had a second steel gate behind it. Police also noted that there were two German shepherds which roam the area between the second gate and the front door of the house.

Police concluded that "the level of technology and security employed ... must be considered as high".<sup>793</sup> They believed it was an attempt to thwart police investigations, and to "further protect the premises, occupants and contents from competitors in the local drug trade."<sup>794</sup> Police also noted that their surveillance of the premises indicated that the premises are never unattended.

Five months after the Strike Force began, and after gathering a large amount of evidence against members of the syndicate, a series of search warrants was applied for and granted, including a drug premises search warrant in relation to offender A's house, and the premises of an associate. Several "property tracking"<sup>795</sup> search warrants were issued to search the homes of several of offender A's relatives. All of the search warrants were executed on the same day.

#### Drug premises search warrant 1: offender as premises

Police executed a drug premises search warrant at Offender A's premises. Offender A, and another person who police also believed was involved in the syndicate,<sup>796</sup> offender B, were at the house and were arrested.

<sup>792</sup> Facts sheet, State Crime Command, Drug Premises Incident 1.

<sup>793</sup> Ibid.

<sup>794</sup> Ibid.

<sup>795</sup> The New South Wales Crime Commission was also involved in this investigation. It appears that these warrants were issued under the s. 11 (2) of the *New South Wales Crime Commission Act 1985* that authorises the issuing of search warrants if there are reasonable grounds to believe that a thing "connected with a matter relating to a relevant criminal activity" will be on the premises.

<sup>796</sup> COPS event narrative 2, State Crime Command, Drug Premises Incident 1.

When police searched the premises, they found “cash and other items consistent with the [defendant’s name] involvement with the supply of ... drugs and the manufacture of amphetamine.”<sup>797</sup> They found large quantities of money, firearms and documents that appeared to be associated with illicit drug manufacture. In addition, the following prohibited drugs and restricted substances were located:

- 45.59 grams of methylamphetamine
- 5 ml plastic jar of methylamphetamine
- 0.69 grams of Hydrobutanic Acid (GBH)
- 2 tablets of a drug called “V”
- 34.7 grams of testosterone (a prescribed restricted substance)
- 242 pseudoephedrine tablets (which can be used as a precursor to make prohibited drugs) and
- 1.4 grams of cannabis leaf.

Various documents that may have been associated with the manufacture of prohibited drugs were also located in two brief cases found at the premises. These included instructions for establishing a clandestine laboratory, and other documents outlining the steps involved in manufacturing amphetamines, LSD and MDMA (ecstasy). Police also found receipts for laboratory equipment.

Substantial quantities of money were located at the premises. An amount of \$29,140 was found on the top of a wardrobe in offender As bedroom, and \$1,700 in a top drawer. A large quantity of money was also identified in an off shore bank account, \$150,000, and over \$40,000 in another bank account. Offender A also appeared to own two boats. Police noted in a facts sheet that offender A is unemployed, is “apparently in receipt of no legitimate income”, and “has engaged in activities which defies his apparent means”.<sup>798</sup>

A property tracking warrant was executed on Offender As mother’s house. Police found 2.212 kilograms of methylamphetamine, stored in several fridges.<sup>799</sup> They also located items such as laboratory glassware and scales. Police stated that they questioned offender A in relation to the manufacture of the 2.212 kilograms of methylamphetamine, but he declined to answer any of the questions that were put to him.<sup>800</sup>

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### Drug premises search warrant 2: offender C and D’s premises

A drug premises search warrant was also executed at the home of two associates of offender A, who we will call offenders C and D. During the Strike Force investigation, offender C had been identified as having knowingly taken part in the supply of methylamphetamine.

During the execution of the search warrant, offender’s C and D were asked to declare any items within the premises that were illegal. According to the event narrative, offender D:

*... indicated to a blue vase situated within the dining room of the premises that contained “Amphetamine”. Police seized [this] vase and a quantity of power, crystal and tablets were found, along with a set of scales and a spoon.*

*The search continued and a further amount of drugs, containing powder, crystal, tablets, and liquid forms of drugs were found. Again within the dining room of the unit.<sup>801</sup>*

<sup>797</sup> COPS event narrative 1, State Crime Command, Drug Premises Incident 1.

<sup>798</sup> Facts sheet, State Crime Command, Drug Premises Incident 1.

<sup>799</sup> COPS event narrative 1, State Crime Command, Drug Premises Incident 1. This quantity of drugs, and other items located at this premises, are not included in the items seized, as this was not a Drug Premises search warrant, and drug premises charges were not laid against the occupants.

<sup>800</sup> COPS event narrative 1, State Crime Command, Drug Premises Incident 1.

<sup>801</sup> COPS event narrative 2, State Crime Command, Drug Premises Incident 1.

The prohibited drugs that were located at the premises were 67.1 grams of amphetamine, and 161 ecstasy tablets.<sup>802</sup> In offender CAS bedroom, police also found \$900, a set of scales, and a large bag of ammunition that was “secreted under the bottom draw of the bedside tables.”<sup>803</sup>

#### **Charges laid following police action**

Offender A was charged with a total of 61 offences including allowing his premises to be used as drug premises, organising drug premises, a large number of supply offences, drug manufacturing, possession, and supplying drugs on an ongoing basis. The Crime Commission restrained the money in the accounts noted above, and other property, including the two boats that were also in his name.

Offender B was charged with being found on drug premises and with several supply offences. The charge of being on drug premises was put on a schedule of offences to be considered by the court for the purposes of sentencing offender B in relation to the supply offences. Offender B received a two year prison sentence for one of the supply offences, and a 250 hour community service order for another supply offence.

Offender C was charged with allowing her premises to be used as drug premises and supply. Offender D was charged with organising drug premises, and supply offences.

The charge laid against offender C of allowing her premises to be used as drug premises was put on a schedule of offences to be taken into account in her sentencing for the supply offence. Offender C received a 300 hour community service order for this supply offence. The charge laid against offender D for organising drug premises was also put on a schedule, and he was sentenced to three years imprisonment for a supply offence.

### **8.6.4. Are drug users and user/dealers being targeted by the Drug Premises Act?**

In parliamentary debate, and in submissions to our discussion paper, concerns were expressed that the Drug Premises Act may not target high level drug suppliers, but may instead target user/dealers involved in drug premises as a consequence of their own drug use.

It was evident from our examination of 80 court transcripts relating to the use of the Act in Cabramatta that 25 of those charged with an offence under the Drug Premises Act had a history of drug use and/or a history of drug addiction. However, it must be noted that in some circumstances, a prior history of drug use will not become apparent at court.<sup>804</sup> It may be that the number of people involved in drug premises in Cabramatta who are also drug users is higher than our analysis of court transcripts suggests. A health professional from Cabramatta who put in a submission to our discussion paper stated that most of those she knew of who had been charged on drug premises in the area were either street dealers, or people who “deal enough to maintain their own needs”.<sup>805</sup> In a focus group we conducted, a Cabramatta detective described the type of drug supply operations targeted by the Act as “on the street, a house that may be dealing to addicts, nearly all of them are addicts themselves”.<sup>806</sup>

We have also found some evidence in event narratives where it was explicitly stated that people arrested on drug premises were dealing drugs to support their own addiction. For example, on one occasion, police obtained a drug premises search warrant for a house in a LAC in the Northern Region “as a result of police surveillance and numerous intelligence reports”.<sup>807</sup> They arrested the occupier of the house, a 42 year old male, as he walked in through the back gate of his house. When police searched him, officers found 5.6 grams of heroin, and, according to the event narrative, he “stated that he ... intended to sell half and self administer the other”. The man also told police that he had been obtaining this quantity of heroin two or three times a week for the past two months to “finance his own habit”.<sup>808</sup>

Inside the house, police found numerous unused and used syringes, two sharps containers, five vials of methadone and three grams of cannabis, and some stolen property that the man told police he had received as payment for supplying heroin. The man later admitted that he allowed his premises to be used by between six and ten people a day to administer heroin.<sup>809</sup>

<sup>802</sup> COPS event narrative 4, State Crime Command, Drug Premises Incident 1.

<sup>803</sup> COPS event narrative 3, State Crime Command, Drug Premises Incident 1.

<sup>804</sup> Usually, this type of information emerged in discussions on sentencing or penalties, but may not emerge if, for example, the defendant pled not guilty.

<sup>805</sup> Submission, Health Professional, received 30 August 2003.

<sup>806</sup> Focus group, Cabramatta police, 2 July 2003.

<sup>807</sup> COPS event narrative, Northern Region, Incident 6, 10 January 2002.

<sup>808</sup> Ibid.

<sup>809</sup> Ibid.

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In another incident in a LAC in the Southern Region, it was also evident that the occupants of the drug premises were themselves drug users. In the event narrative, police noted that they believed that the unit was being used for the administration of prohibited drugs, but it does not appear that any other items associated with drug supply were found on the premises.

Police had received “information that the occupants... [of the unit] were in possession of prohibited drugs”. They applied for and were granted a warrant.<sup>810</sup> Two women and a nine month old baby were on the premises when police arrived. In their search, police found syringes, swabs and tourniquets, 2.8 grams of amphetamine, 2.4 grams of cannabis and 2 “bongs”. In the event narrative, police do not record the seizure of any items associated with drug supply, such as scales, cutting agents or drug packaging, but note that they seized “numerous other items of interest including unmarked medical prescriptions and property”.<sup>811</sup>

One woman, occupant A, was charged with allowing the premises to be used as drug premises, and possession of prohibited drugs, and occupant B was charged with possessing prohibited drugs. In the event narrative, police note:

*From locating the amphetamine and cannabis within the unit and the fact there were syringes, swabs and tourniquets, police are of the opinion that the premises rented by the defendant [surname] is commonly used in the administration of prohibited drugs.*<sup>812</sup>

According to the event narrative, occupant A also “admitted to police that she is suffering from an addiction to amphetamines and is seeking assistance to get off the drug.”<sup>813</sup>

### 8.6.5. Conclusion

Most of the 114 uses of the Drug Premises Act over the review period have involved low level drug supply operations from premises. As NSW Police have noted, high level drug suppliers are unlikely to risk police scrutiny by allowing their premises to be used for drug supply. That said, several instances of very significant drug supply have also been affected by the use of the Act.

Our research findings also suggest that some people who are involved in selling drugs from drug premises were doing so to support their own addiction. This is consistent with other research that has been conducted on the drug trade, and illustrates the inherent difficulties in isolating the impact of drug legislation to drug suppliers.

Therefore, while the objective of the Drug Premises Act was to target organised and professional drug suppliers, user/dealers and those who were dealing for profit alone, and high level, middle level and low level dealers, do not appear to have been distinguished in the implementation of this Act.

It is important to place the research findings of this review in a broader context. First, a factor that may have affected the level of drug supply that the legislation is targeting is resource availability in NSW Police. In interviews conducted for this review, police have consistently cited this as a factor impacting upon their ability to target high level drug supply operations.

Second, as we have discussed in the chapter, “Methodology”, it is not possible to gauge the impact that the heroin drought may have had on the quantities of drugs seized from drug premises.

Third, research on drug law enforcement has shown that it is not uncommon for drug law enforcement to fail in its aim of targeting more serious offenders.<sup>814</sup> It has been argued that, while it is widely accepted that police should focus on large-scale importers, suppliers, and traffickers, rather than user dealers, there is a:

*... significant disjuncture between law enforcement agencies’ commitment to targeting major drug offenders and the more prosaic reality in which law enforcement impacts most on users and street-level dealers.*<sup>815</sup>

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<sup>810</sup> The type of search warrant is not noted.

<sup>811</sup> Event narrative, Southern Region, Drug Premises Incident 3.

<sup>812</sup> Ibid.

<sup>813</sup> Ibid.

<sup>814</sup> P. Green and I. Purnell, *Measuring the success of law enforcement agencies in targeting major drug offenders relative to minor drug offenders*, National Police Research Unit, Adelaide, 1995.

<sup>815</sup> Lisa Maher, David Dixon, Michael Lynskey and Wayne Hall, *Running the Risks: Heroin, Health and Harm in South West Sydney*, 1998, p. 98, referencing the work of Sutton and James, *Evaluation of Australian Drug Anti-Trafficking Law Enforcement*, National Police Research Unit, Payneham, 1995.

One factor that appears to have perpetuated this phenomenon is the lack of a clear, consistent definition of what constitutes various levels of drug supply. One step toward better-targeted drug law enforcement could be the development of definitions that practically assist police to develop more targeted drug law enforcement strategies. Such an initiative would accord with the NSW Government's evidence based approach to drug law enforcement,<sup>816</sup> and could also be used to further refine the NSW Police "Illicit Drug Law Enforcement Performance Indicators" which are used to evaluate police performance in this area.<sup>817</sup>

A final point is that, although they have not been specifically targeted, our review demonstrates that a number of drug suppliers have been affected by the Act. Those persons have been charged with offences under the Act. State Crime Command has also anticipated the future use of the Act to obtain warrants and search clandestine laboratories. This suggests the Act has on-going utility in dealing with significant drug manufacture and supply.

## 8.7. Recommendations

**That NSW Police develop definitions of what constitutes various "levels" of drug supply to practically assist them to develop more targeted drug law enforcement initiatives.**

**That these definitions be incorporated into the process for evaluating NSW Police performance in relation to drug law enforcement, the "Illicit Drug Law Enforcement Performance Indicators".**

NSW Police has advised us that it supports these recommendations in principle. In doing so, it has said: "While the value of such an undertaking is recognised and over time there has been work to that end, the relationship to the operation of the Drug Premises Act is less than clear. Work on the Illicit Drug Law Enforcement Performance Indicators Report is ongoing. Reference to definitions along the lines recommended will be considered in the context of the report".

<sup>816</sup> NSW Police, *Drug Law Enforcement Performance Indicators*, April 2002.

<sup>817</sup> These are a set of performance indicators that were developed by Police in 2002 in response to a NSW Drug Summit recommendation. The indicators provide a mechanism to assess the effectiveness of a range of drug law enforcement strategies and are intended to "evolve to reflect changing circumstances". NSW Police, *Drug Law Enforcement Performance Indicators*, April 2002 p.2.

