

**Report to the Attorney-General on agencies' compliance
with Part IAAA of the *Crimes Act 1914* (Cth):
Delayed Notification Search Warrants**

April 2024

Australian Federal Police

For the period 1 January 2023 to 30 June 2023

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Introduction

Part IAAA of the *Crimes Act 1914* (Cth) (the Act) enables the Australian Federal Police (AFP) to apply for and execute delayed notification search warrants (DNSWs) to investigate eligible terrorism offences punishable by imprisonment for 7 years or more. A DNSW allows a covert search of a premises, with the occupier of that premises being notified at a later time. The AFP is currently the only eligible agency that can use DNSWs.

Under section 3ZZGB of the Act the Commonwealth Ombudsman must from time to time, and at least once in each 6 month period starting on 1 January or 1 July, inspect the records of the AFP to determine the extent of compliance with the Act in relation to DNSW powers.

Under section 3ZZGH of the Act, as soon as practicable after each 6 month period, our Office must present a report to the Attorney-General on the results of each inspection.

This report presents the results of our November 2023 inspection of the AFP's use of DNSWs for the records period of 1 January 2023 to 30 June 2023.

What we found

The AFP applied for and had one DNSW issued during the records period. This DNSW was not eligible for inspection in this period. Consequently, our inspection evaluated the AFP's implementation of our previous suggestions for improvement and reviewed the AFP's governance and policy documents supporting the use of DNSWs.

We were pleased to observe progress by the AFP with implementing our previous suggestions. This included updated templates, development and delivery of training, updated National Guidelines in relation to destruction of information obtained under a DNSW and updates to the action sheet and execution booklet.

Despite the progress, we were concerned by the significant delay in finalising important guidance material to support members to apply these powers. We observed that the AFP took almost 12 months to clear the December 2022 version of the Better Practice Guide (BPG), despite our Office suggesting that this be expedited following our June 2023 inspection.



As the AFP rarely use these powers, it is imperative that accurate, up to date guidance material is readily available to support members who may unexpectedly be required to consider with using the powers and complying with the Act. This problem is compounded when there is also high staff turnover and a lack of contemporary experience on how to appropriately use the powers.

Consequently, we made **one recommendation** for the AFP to investigate and remedy issues that contributed to administrative delays in finalising guidance materials for the DNSW regime. The AFP should apply any lessons learned when developing any guidance material for the use of covert or intrusive powers.

Commitment to compliance

We acknowledge the AFP Joint Counter Terrorism Team's (JCTT) efforts in sharing draft guidance material and compliance frameworks with our Office. The JCTT also provided a high level of support to our inspection, demonstrating a strong commitment towards compliance. Our engagements during the inspection were frank and constructive, providing us with confidence they were sufficiently focused on reducing risk of non-compliance.

Response to our findings

We provide the AFP with an opportunity to respond to our inspection findings and any recommendations we make. On 2 February 2024, we requested the AFP advise whether they accept our recommendation and, if so, provide a timeframe in which the AFP expects to implement the recommendation.

In response to our findings, on 5 March 2024 the AFP accepted our recommendation and advised that they are implementing a process to better track the development, endorsement and publication of governance documents. The final Better Practice Guide to support members to apply DNSW powers was published in February 2024. The AFP response to our findings is provided in

Attachment A.



Attachment A – AFP Response

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Tuesday, 5 March 2024

Mr Iain Anderson
Commonwealth Ombudsman

Via email: [REDACTED]

Dear Mr Anderson,

Thank you for your correspondence dated 2 February 2024, containing your finding of the Delayed Notification Search Warrants inspection, which occurred under Part IAAA of the Crimes Act 1914 (the Act) between 8 and 9 November 2023.

The Australian Federal Police (AFP) appreciates the opportunity to comment on your finding and highlight any operationally sensitive content that should not be included in your Annual Report to the Minister under section 3ZZUH(4) of the Crimes Act 1914 (Cth).

Since receiving your letter, we have had the opportunity to gain a better understanding of the reasons for the delay in the development and publication of the governance relating to Delayed Notification Search Warrants. In June 2023, your office undertook an inspection of the AFP's use of Delayed Notification Search Warrants. During this inspection, your inspectors made a number of suggestions in relation to the draft Delayed Notification Search Warrants Better Practice Guide (BPG). These amendments were accepted and incorporated into the draft, with the final BPG being formally endorsed in November 2023.

Unfortunately, the publication of the endorsed BPG did not occur until February 2024. This was primarily due to an internal administrative oversight and the Christmas stand down period, rather than delay caused by AFP Legal. Since becoming aware of this, the Counter Terrorism & Sensitive Investigations Command is implementing a process to better track the development, endorsement and publication of its governance documents.

I agree with your observation that appropriate guidance material is particularly important for use of these powers due to their infrequent use.

I undertake to make the published BPG available to [REDACTED] Assistant Director Law Enforcement Integrity & Assurance, this week.

The AFP has not identified any operational sensitivities, in your report, that would preclude inclusion in the Ombudsman's annual report to the Minister in accordance with s 3ZZUH(4) of the Crimes Act 1914 (Cth).

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The AFP appreciates the opportunity to provide comment on this finding and looks forward to the continued cooperation between our agencies. If you wish to discuss further please contact me directly on [REDACTED] or [REDACTED] on [REDACTED] or [REDACTED]

Yours sincerely,

[REDACTED]

Ian McCartney
Deputy Commissioner Crime

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