

Government response to the Ombudsman's report on the *Restricted Premises Act 1943*

#	Ombudsman Recommendation	Government Response	Government Comment
1	<p>The Commissioner of Police should obtain independent legal advice about the scope of the seizure powers under sections 10 and 13 of the <i>Restricted Premises Act 1943 (the Act)</i> and, if necessary, revise relevant procedures, guidelines and training that specify the items police are authorised to search for and seize when conducting searches under those provisions.</p>	Supported	<p>The NSW Police Force (NSWPF) will revise relevant procedures, guidelines and training by updating their standard operating procedures (SOPs) with regards to the seizure powers under sections 10 and 13 of the Act. The NSWPF will obtain independent legal advice to confirm the updated SOPs are legally accurate and compliant with the Act.</p> <p>This will:</p> <ul style="list-style-type: none"> • clarify the extent and scope of police powers under the Act; • enable more targeted training for the NSWPF; and • promote public confidence in the Act and law enforcement.
2	<p>The Attorney General propose, for the consideration of the Parliament, an amendment to the Act to provide the NSWPF with a power to give any person on the premises during a search, under a section 13 search warrant, a direction that is reasonable in the circumstances to minimise a risk to the safety of any person on the premises.</p>	Supported	<p>Searches under section 13 of the Act can involve considerable risk to NSWPF officers and people present. The NSWPF should be empowered to issue reasonable directions to minimise these risks.</p>
3	<p>The Attorney General propose, for the consideration of the Parliament, an amendment to the Act to make it an offence to fail to comply with a reasonable direction given under the Act without a reasonable excuse.</p>	Supported	<p>The NSW Government will model the proposed offence and penalties on comparable offences under the <i>Law Enforcement (Powers and Responsibilities) Act 2002 (LEPRA)</i>.</p>

4	<p>The Attorney General propose, for the consideration of the Parliament, an amendment to the Act that empowers police to search any person found in or on the premises whom police reasonably suspect of having a thing mentioned in a section 13 search warrant.</p>	Supported	<p>This proposed amendment will clarify the scope of the NSWPF search powers and facilitate effective searches under section 13 of the Act.</p>
5	<p>The Attorney General propose, for the consideration of Parliament, amendments to the Act to:</p> <ul style="list-style-type: none"> • enable a police officer to require a person present during a section 13 search to state his or her full name and residential address, • make it an offence for a person to fail to comply with such a requirement, without reasonable excuse, and • make it an offence for a person to give a name or address that is false, without reasonable excuse. 	Supported	<p>One of the aims of the Act is to prevent reputed criminals from attending and or controlling premises. Obtaining identity information will assist in determining whether people on the premises are reputed criminals, and assists the NSWPF to prepare applications for reputed criminal declarations.</p>
6	<p>The Attorney General propose, for the consideration of Parliament, amendments to the <i>Surveillance Devices Act 2007</i> to permit the video recording of any search conducted under section 13 or section 10 of the Act .</p>	Supported and implemented	<p>The <i>Justice Portfolio Legislation (Miscellaneous Amendments) Act 2016</i> amended the <i>Surveillance Devices Act 2007</i> to give effect to this recommendation.</p>
7	<p>The NSWPF amend policies, procedures or training material relevant to the exercise of the powers under section 10 of the Act to ensure that police conducting the search provide information to occupants on the premises, both verbally and in writing, and give them an opportunity to allow police to enter.</p>	Supported	<p>The NSWPF routinely provides verbal information to occupants about the search and provide an opportunity for occupants to allow the NSWPF to enter.</p> <p>Where reasonably practicable, occupants should receive information both verbally and in writing, and be given an opportunity to facilitate the search. This practice may discourage violent behaviour from occupants and minimise risk of harm to the NSWPF and other people present on the premises.</p>

8	The NSWPF should consider amending policies, procedures or training material relevant to a declaration under the Act to ensure that police make reasonable attempts to provide notice of any such declaration to both the owner and occupier of the premises.	Supported	Owners and occupiers should be notified when a declaration is made over their premises. These amendments will provide owners with an opportunity to address activities on their property which they may not have known about.
9	The Attorney General propose, for the consideration of Parliament, an amendment to the Act to require police to notify the occupier of premises searched under section 10, who is not present during the search, that a search has occurred, as soon as practicable after it has taken place.	Supported	<p>Where reasonably practicable, occupiers should know when a search of their property has occurred in their absence.</p> <p>This proposed amendment will create greater alignment with other search warrant powers, for example, the notice requirements in relation to warrants under sections 67 and 67A of LEPRA.</p> <p>Failure to notify the occupier will not invalidate the execution of any NSWPF powers during the search.</p>
10	The Attorney General should propose an amendment to the Act, for the consideration of Parliament, to enable the Court to rescind a declaration on application by the owner or occupier, if satisfied there is no reasonable ground for suspecting the proscribed activities giving rise to the declaration are no longer taking place at the premises and are unlikely to occur again at the premises.	Supported	<p>A declaration is in force until rescinded. An occupier or owner can apply directly to a court for a rescission if they have never allowed proscribed activities to occur on the premises.</p> <p>Currently, an occupier or owner may ask the NSWPF to rescind a declaration over their property. If the NSWPF agree, they may apply for a rescission on that person's behalf if the proscribed activities under section 3(1) no longer apply to the premises. Where rescissions are contested, an owner or occupier should have the right to request the court to consider an application for rescission of a declaration if the proscribed activities have ceased and will not reoccur.</p> <p>In order to balance the rights of owners and occupiers, and uphold the aims of the Act, the owner or occupier may apply to the court for a rescission on proof that the proscribed activities in</p>

			<p>section 3(1) have ceased for a continuous period of 12 months, and that the proscribed activities are unlikely to reoccur at that premises. The applicant must prove this on the balance of probabilities.</p> <p>The applicant may apply or reapply for a rescission once 12 months have passed from the date the declaration or previous rescission application was made and determined to be unsuccessful.</p>
11	<p>The NSWPF provides to the Attorney General a report detailing any declarations that have been made under the Act, and the use of section 10 powers and any charges laid for the new offence provisions. This report should be provided every 12 months from the date of this report for three years.</p>	Supported	<p>The NSW Government supports the proposed amendment to require provision of a report to the Attorney General for the purposes of keeping under scrutiny the additional police search powers and monitoring the operation of the new offence provisions.</p>