

THE Daily Telegraph

Dozens of police searches unlawful

By Neil Mercer
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A SUPREME Court judge has found that NSW police have been illegally searching the homes of suspected criminals.

Justice Peter Hall's ruling means that evidence gathered in dozens of major cases may be inadmissible in coming trials.

The Sunday Telegraph has also learned that the unlawful "covert" police searches have been going on for years.

Also known as "sneak and peek" searches, they are primarily designed to gather intelligence rather than seize evidence. They are conducted so the suspect does not know police have been present.

The first case known to be affected by the ruling, a drug prosecution, is set down for next month.

Lawyers acting for the accused are almost certain to ask the presiding judge that evidence gathered via illegal searches be struck out.

The Sunday Telegraph has also been told police have been aware for years that "covert" search warrants are probably illegal.

Despite that, according to three senior Sydney barristers, investigators have continued to use them.

"Covert warrants are reasonably common in any ongoing investigation," a lawyer who is dealing with one said.

"The question now is ... are police allowed to continue to do things that are unlawful?"

In his judgment earlier this month, Justice Hall found that three "covert" search warrants executed by NSW police in 2002 were illegal.

The searches involved the investigating police obtaining warrants from a Redfern chamber magistrate.

A police spokeswoman, however, said officers did not at the time believe the warrants were illegal, as they had been "approved by a judicial officer of the NSW court system".

Detectives then searched a home unit in Waverley St, Bondi Junction.

The search was conducted while the occupier, an alleged drug trafficker, was out.

They also entered another unit in St Pauls St, Randwick.

Officers took details of phone cards, computer files and other documents, but made sure nothing was disturbed.

The suspect was not told of the raid until months later.

Justice Hall said this was "clearly contrary to the provisions of the Act".

Police had put "operational considerations" above the law, he said.

Execution of a search warrant was a serious matter, Justice Hall said.

Secret searches might be considered desirable by police, but there had to be a balance with a person's rights.

Justice Hall said there was nothing in the legislation that authorised covert search warrants.

"The provisions of the Act, in fact, point in the opposite direction."

The law "clearly intended" that citizens be given notice of their rights.

"I have concluded that the execution of each warrant was contrary to the Act and was, accordingly, in each case unlawful."

The warrants were obtained by police from the Special Crime and Internal Affairs unit.

They were working with the NSW Crime Commission, which investigates organised crime.

A document obtained by *The Sunday Telegraph* suggests the commission and police knew seven years ago that covert warrants were not lawful.

In a submission dated March 21, 2000, the commission specifically asked the State Government for changes to the law.