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A process evaluation of the Drug Supply Prohibition Order (DSPO) pilot scheme

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AIM

To review the two-year pilot of the NSW Drug Supply Prohibition Order (DSPO) scheme, which gave police the power to apply for warrantless search powers over a person who has a prior serious drug conviction and who is likely to engage in the manufacture or supply of illicit drugs.

METHOD

We drew on three sources of data for the review. First, we descriptively analysed administrative data provided by the NSW Police Force (NSWPF) on approvals, revocations, police actions, and charges arising from DSPO applications between May 2022 and June 2024. Second, to provide context we considered five year recorded trends in drug manufacture and supply offending in areas where the scheme was operating. Third, we undertook semi-structured interviews with 17 key stakeholders involved in the DSPO scheme to understand the scheme's implementation, including the appropriateness and effectiveness of its processes, safeguards, and legislative framework. We interviewed 10 representatives from the NSWPF (Crime Managers, Police Department supervisors, Covert Application Unit, Drug and Firearms squad, and a senior lawyer with the Crime Disruption & Special Inquiries unit), six Authorised Magistrates, and the DSPO Oversight Commissioner.

RESULTS

From the beginning of the trial in May 2022 until June 2024, 27 applications for DSPOs were made across the four trial sites, 15 of which were granted, with one later revoked. A total of 58 searches were conducted against 12 DSPO subjects, resulting in 79 legal actions, 31 proven outcomes, and two prison sentences. A number of factors contributed to the low number of DSPO applications and enforcement outcomes. These include: geographical limitations and the movement of subjects outside of boundaries; changes in patterns of drug supply within pilot sites; overlap between those eligible for DSPO and other schemes, such as the Firearms Prohibition Order (FPO) scheme; and delays in the review process. Generally, most stakeholders agreed that the scheme's eligibility criteria were applied appropriately, and that the legislative framework was adequate given the powers afforded to police under the scheme. However, many commented that further information was needed to clarify the scheme's meaning of "serious drug supply" and to better identify its intended targets. Additionally, the need to reconsider what evidence is required to meet the eligibility criteria was highlighted, with the 10-year conviction period being unnecessarily lengthy and potentially exclusionary of higher-level offenders who police have been unable to convict.

CONCLUSION

While only a small number of orders were granted and convictions secured during the pilot, most stakeholders believed that the DSPO scheme was operating as intended. Modifications could be made to the scheme to increase the efficiency of the application process and effectiveness of order enforcement. There is insufficient evidence from the pilot to determine whether DSPOs had a meaningful impact on drug supply and manufacture in NSW.

KEYWORDS

Drug Supply

Drug Manufacture

DSPO

Illicit Drugs

Policing

INTRODUCTION

In May 2022, a two-year trial of the Drug Supply Prohibition Order (DSPO) scheme commenced in NSW. The DSPO scheme gives the NSW Police Force (NSWPF) the power to apply for an order granting them warrantless search powers over an adult who has a prior serious drug conviction if they reasonably believe that the person is likely to engage in the manufacture or supply of a prohibited drug.

The pilot scheme, which concluded in May 2024, had two objectives. Firstly, to assist police to gather evidence of drug supply and drug manufacture effectively and efficiently. Secondly, to have a disruptive and deterrent effect on a person subject to a DSPO, who may reconsider whether reengaging in a lifestyle involving the manufacture or supply of illicit drugs is worth the increased risk of police detection and further conviction (Farlow, 2020).

The trial of the DSPO scheme operated in four Police Area Commands (PACs)/Districts (PDs): Bankstown PAC, Coffs-Clarence PD, Hunter Valley PD, and Orana Mid-Western PD. These four sites were selected to assess the operation of the DSPO scheme in a cross-section of different policing environments across NSW. Sites were additionally selected in recognition of the unique difficulties of policing drug supply and manufacture in regional areas. For example, the challenges of operating covert surveillance in small regional areas “where police officers are often known and unfamiliar faces are noticed” (Farlow, 2020). These sites were also identified by the NSW Police Force as problem sites, lacking the necessary powers to disrupt drug supply (Parliament of NSW, 2020).

In order for a DSPO application to be made against a person, three eligibility criteria must be met.¹ The person must:

- a) be an adult (18 years of age or older) as of the application date;
- b) have a conviction for a serious drug offence in the 10 years prior to the application;² and
- c) be likely to further engage in the manufacture or supply of a prohibited drug.

Parliamentary debates and submissions around the introduction of the DSPO scheme revealed a number of concerns relating to its proposed reach and the potential misuse of the powers by the NSWPF. For example, one Member of Parliament, Mr Alex Greenwich MP, argued that the scheme would introduce “extraordinary, excessive and unnecessary powers with few checks and balances to prevent misuse” (Parliament of NSW, 2020, p. 8). Building on these concerns, another Member of Parliament, Ms Jo Haylen MP, argued that the scheme “set an unnecessarily low threshold for issuing a Drug Supply Prohibition Order” (Parliament of NSW, 2020, p. 6). This concern was shared by The Law Society of NSW (2020), which did not support the Bill. Additionally, they sought clarification on how a serious drug offence might be interpreted under the new legislation, noting that it would be possible for “a 19-year-old person, previously convicted as a juvenile, and placed on a community-based order for deemed supply of five to six MDMA pills at a festival, could be subject to these extraordinary powers, if a police officer reasonably believes they may be engaging in supply of a prohibited drug”. The requirement of a serious drug conviction within 10 years was also critiqued as unnecessarily lengthy (The Law Society of NSW, 2020) and a double penalty that assumes recidivism, and disregards the potential for rehabilitation and disengagement from offending behaviour (Parliament of NSW, 2020).

In response to these concerns, the definition of a serious drug offence was changed to broadly encompass the cultivation of prohibited plants, owning drug manufacture apparatus, or the manufacture or supply of prohibited drugs. Additionally, previous drug convictions for small quantities (as defined by the Drug Misuse and Trafficking Act 1985 (NSW)) were excluded. However, despite recommendations to reduce the prior conviction period to five years, the 10-year duration was retained. In addition to

¹ For detailed eligibility criteria, see s 5 (1) and s 6 (2) of the *Drug Supply Prohibition Order Pilot Scheme Act 2020* (NSW).

² A serious drug offence in this context includes select offences pertaining to drug supply or manufacture involving not less than the indictable quantity of a prohibited drug, and other drug offences relating to the supply or manufacture of prohibited drugs. Interested readers are directed to s 5 (2) of the *Drug Supply Prohibition Order Pilot Scheme Act* for a concise list of serious drug offences considered by the scheme.

these changes, the Bill included several additional safeguards. To ensure persons previously convicted of supply offences were not unfairly targeted, the legislation requires that the likelihood of reoffending be assessed.³ Matters to be considered in this assessment include: associations with persons involved in drug manufacture or supply activities; whether a person associates with or is a member of a criminal group; whether a person has disproportionate assets to their income; relevant criminal intelligence; and information that may be adverse to the application such as any rehabilitative steps a person may have taken to reduce their risk of offending.

Further, two specialist roles were created to oversee the scheme and ensure applications were only made in appropriate circumstances: (1) an Oversight Commissioner; and (2) Authorised Magistrates. The Oversight Commissioner is an independent role appointed by the Attorney General to assist, guide and manage the process of issuing orders, and to ensure appropriate implementation of the DSPO scheme and adherence to safeguards. Their independence allows them to be a direct point of contact for DSPO subjects to raise enquiries or apply for their DSPO to be revoked. The Oversight Commissioner reviews DSPO applications and makes a submission, prior to sending it to an Authorised Magistrate who then conducts a final review. After reviewing the application, the Authorised Magistrate decides whether to grant, refuse or send the application back for further amendment. Authorised Magistrates are Local Court magistrates who have consented to be an Authorised Magistrate under the scheme and who have been appointed as such by the Attorney General.⁴

The decision to grant or refuse a DSPO is conducted outside of the courtroom and the potential subject of the DSPO is not entitled to be told about the application or the reasons for an order being granted.⁵ This was considered necessary to “protect confidential criminal intelligence that may form part of an application” (Farlow, 2020), but was criticised by some stakeholders as it did not allow for third parties to represent the interests of the accused or critically interrogate the evidence used to demonstrate the likelihood of reoffending (The Law Society of NSW, 2020). While the subject of a DSPO is not permitted to make submissions during the application process, revocation procedures are available to remedy orders which are found to be inappropriate or unnecessary. Subjects of an order must wait a minimum of six months after the order has been approved before making an application for the order to be revoked. The Oversight Commissioner and NSW Police Commissioner are also able to make an application on the defendant’s behalf to revoke an order at any time.

Several measures were also put in place by the NSWPF to ensure targets were appropriately identified and the application process ran efficiently. Most notably, it was determined that only Superintendents or above were able to identify targets and prepare applications. Further, each DSPO pilot site was required to appoint a Crime Manager to oversee the application process, enforce approved applications, collaborate with Crime Managers from other DSPO locations on the workings of the scheme, and report to the Assistant Police Commissioner and the Oversight Commissioner about the scheme’s functioning within their site. The Crime Manager was also obliged to coordinate with the NSWPF Covert Application Unit, who review the application, to ensure its completeness prior to assessment by the Oversight Commissioner.

3 See s 10 of the Drug Supply Prohibition Order Pilot Scheme Act for an outline of matters to be considered in this assessment.

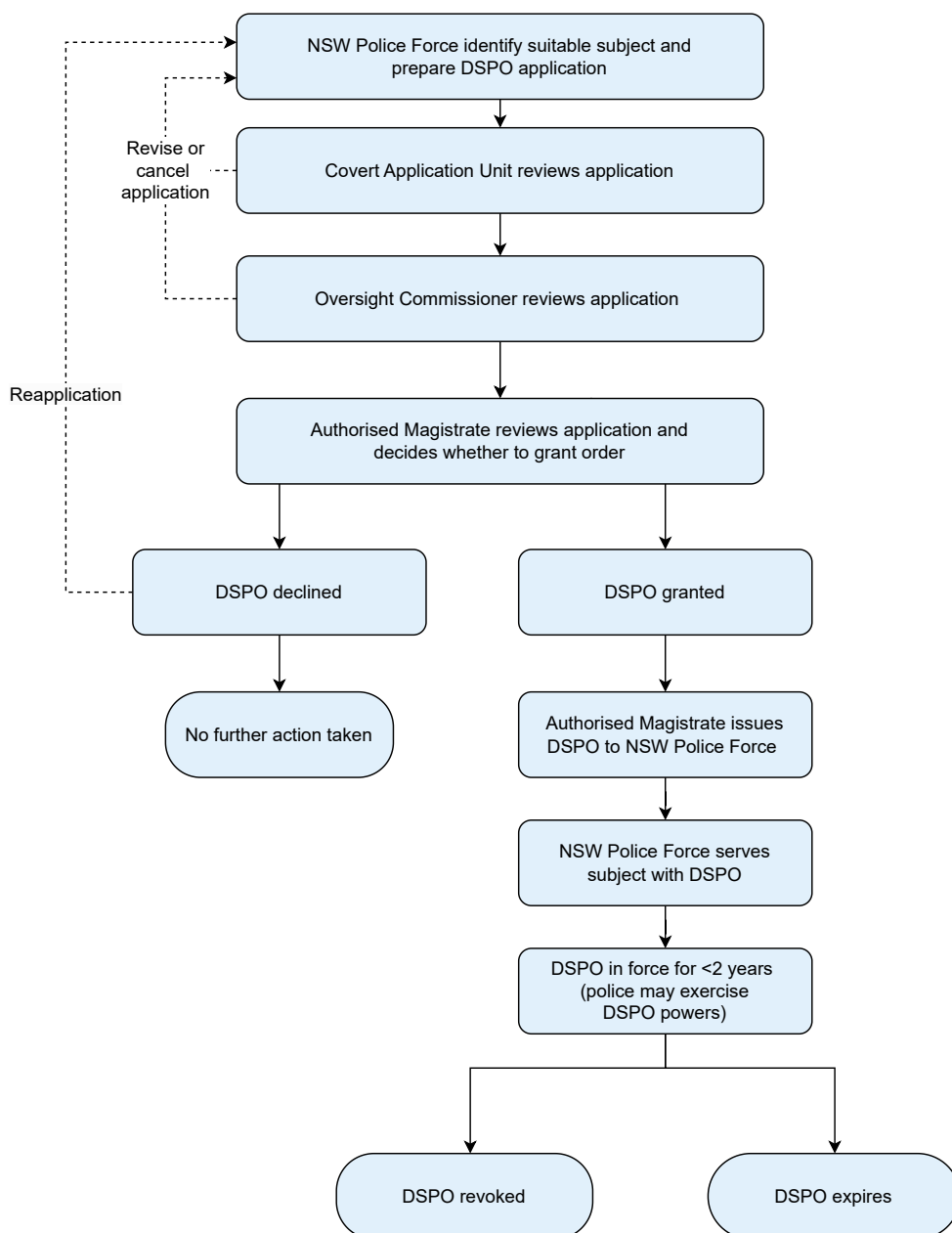
4 Authorised Magistrates remain in the role until their authorisation is revoked by way of: (a) ceasing to be a magistrate; (b) the magistrate revoking their consent; or (c) the Chief Magistrate notifying the Attorney General that they should not continue to be an Authorised Magistrate (s 7 Drug Supply Prohibition Order Scheme Pilot Act).

5 The subject of a DSPO is only notified once police serve them with an approved order.

Processes

Figure 1 shows the application and approval process for a DSPO.⁶ The NSWPF (typically a Crime Manager) prepares an application which is reviewed by the NSWPF Covert Application Unit. Next, the scheme's independent Oversight Commissioner reviews the application. In doing so, they may raise enquiries to or request revisions from the applicant. Once the Oversight Commissioner is satisfied with the quality of an application, they convey the application to an Authorised Magistrate, with the option of including a submission as to whether the application should be approved or not. The Authorised Magistrate assesses the application and decides whether to grant the order. If the application is refused, police can make another application against the same person after two weeks, or sooner if they include further evidence not included in the previous application.

Figure 1. DSPO application and approval process



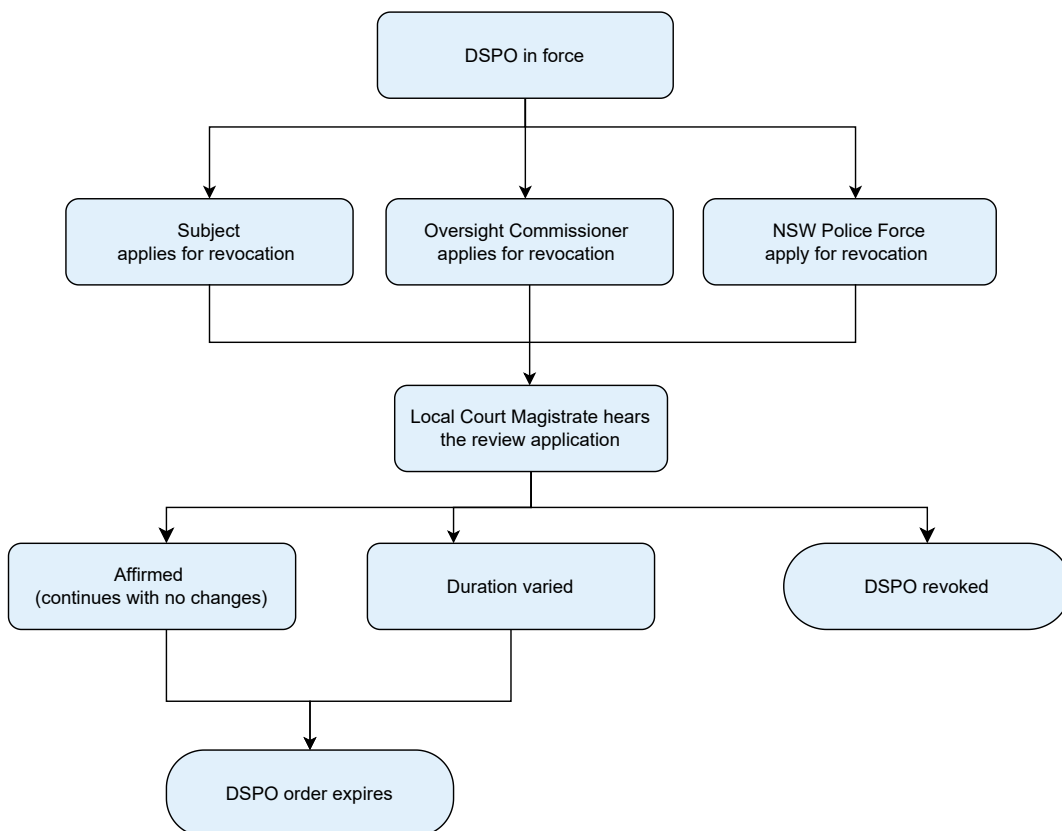
⁶ This process map was informed by internal documentation detailing the application, approval, and revocation stages, including the actor involved in each step.

If the application is approved, the Authorised Magistrate will issue a DSPO to the NSWPF, who must then serve the subject with the order. Once the DSPO is served upon a person, it remains in force for a maximum of two years unless it is revoked. While the order is in force, a police officer may, without a warrant, do one or more of the following:⁷

- a) stop, detain and search the person, and no other person;
- b) enter and search the person’s residence, premises owned by the person or premises that are being used by the person for unlawful purposes;
- c) stop, detain and search a vehicle being driven by the person or occupied by the person.

The revocation process is detailed in Figure 2. An application for revocation can be made by the NSWPF, the Oversight Commissioner, or the subject of the order. Different to the application process, revocations are reviewed by any Local Court magistrate. The Local Court magistrate may choose to either: revoke the order, in which case police are no longer empowered to conduct DSPO searches and a new order cannot be made for six months; vary the length of the order; or affirm the order, in which case it remains unchanged until its expiry (or a further application for a revocation).

Figure 2. DSPO revocation process



⁷ For a detailed description of the effect of DSPOs, see s 4 of the Drug Supply Prohibition Order Pilot Scheme Act.

Influence of the Firearms Prohibition Order (FPO) scheme

The DSPO scheme is based partly on the 2013 expansion of the Firearms Prohibition Order (FPO) scheme. The FPO scheme has operated in NSW since 1978, initially to bar individuals from possessing firearms where it is deemed not to be in the public interest. In 2013, the scheme was expanded via s 74A of the Firearms Act 1996 (NSW) to allow police to conduct warrantless searches of individuals subject to FPOs in order to monitor compliance with the orders.

The NSW Ombudsman (2016) reviewed the additional FPO search powers after two years of its operation. This review examined the number of FPO applications made since the expansion of powers, the number, circumstances, and subjects of FPO searches undertaken by police as well as the outcomes of these searches. The report made several findings:

1. While the FPO scheme enabled a number of searches that would not have been possible under other extant police powers they resulted in: illegal items confiscated in 10% of FPO search events; 1% of searches resulted in a charge for a firearms related offence; approximately 2% of people were charged with a FPO or related firearms offence.
2. In 14% of searches, police did not appear to have a strong reason to conduct the search, aside from the persons being under a FPO.
3. 34% of people subjected to a FPO search were not under a FPO at the time of the search. These erroneous searches typically occurred because these individuals were in the company of a person subject to a FPO. This was not an authorised search power under the legislation.

The NSW Ombudsman ultimately concluded that it was too early to tell whether the FPO search powers effectively assisted in the policing of firearms-related crime and recommended future monitoring and evaluation, specifically into the impacts of the expansion on firearms-related crime and illicit activity. They also recommended further education for police regarding the scope of the FPO search power as well as the expansion of the search powers to search a person not subject to a FPO on private premises when police have a reasonable suspicion of them possessing a firearm, firearm part, or ammunition. This mirrors ancillary search powers available when using ordinary search warrants.

While both FPOs and DSPOs grant police warrantless search powers in certain circumstances, there are several key differences between the DSPO legislative framework and that of the FPO scheme. These include:

- a) Applications for DSPOs pass through an independent Oversight Commissioner and an Authorised Magistrate, while FPOs proceed directly to the NSW Police Commissioner;
- b) DSPOs remain in force for only two years (barring a revocation), while FPOs have no expiration date; and
- c) DSPO powers during the course of the trial are restricted to the geographical boundaries of the trial PACs/PDs, whereas FPO powers have no geographical limitations within NSW.

AIMS

The DSPO scheme represents a considerable expansion of police powers. As a check on those expanded powers, the legislation outlines a detailed application and authorisation process for DSPOs. The current study examines the implementation of the DSPO pilot in the first two years of operation, including assessing the appropriateness and effectiveness of the DSPO processes, safeguards, and legislative framework. It does not evaluate whether the scheme is meeting its objective to reduce drug supply and manufacture, or investigate concerns raised about the scheme regarding police overreach or misuse of powers.

Specifically, this process evaluation set out to address the following research questions:

1. What were the outcomes of DSPO applications?
 - a) How many applications were made and what were their outcomes?
 - b) Were any applications revoked, and if so, why?
 - c) Was the approval process efficient?
2. What police actions were initiated under the DSPO scheme?
 - a) What type of DSPO searches were executed by the police, and how frequently?
 - b) How often and for what offences do DSPO searches result in legal proceedings being commenced?
 - c) According to stakeholders were any changes in behaviour or patterns of drug supply and manufacture observed in the trial sites, and more broadly?
3. According to stakeholders involved in implementation, were the legal and operational frameworks underpinning the DSPO scheme appropriate?
 - a) Where DSPO applications were made, was this done in appropriate cases?
 - b) Are the legal frameworks appropriate for DSPOs (from application to execution)?
 - c) How effective are the current application, revocation, and scoping processes in enabling the functioning of the DSPOs?
 - d) Are there any areas requiring improvement?

METHOD

We drew on three sources of data for this review. First, NSWPF created a DSPO dashboard to capture information pertaining to DSPO applications, searches, legal actions, and their outcomes. For the period between May 2022 and June 2024, data on the following indicators was extracted from the dashboard:

- the number and outcomes of DSPO applications by PAC/PD (granted, cancelled, declined, revoked);
- the length of time between an application being made and an order being granted;
- the length of time between an order being granted and an order being revoked (if this occurred);
- the drug offending history of persons who received a DSPO;
- the number of DSPOs revoked (including the reason(s) for these revocations if available);
- the number and type (person, premises or vehicle) of DSPO searches conducted overall and per DSPO subject; and
- the number and proportion of DSPO searches resulting in charges against each DSPO subject (including the type of charge and court outcome).

Second, we descriptively analysed an extract of administrative data from the NSWPF Computerised Operational Policing System (COPS) describing the number of drug manufacture and supply incidents in the four DSPO pilot sites, and the relative statewide rank of each NSW policing region in terms of the number of incidents recorded in each financial year between 2019/20 and 2023/24.

Third, we supplemented this descriptive data with a thematic analysis of semi-structured interviews with 17 key stakeholders who were involved in the DSPO scheme.⁸ Few stakeholders were directly involved in the implementation of the scheme, and thus our data was heavily skewed toward the views of the NSWPF. Our sample included 10 representatives from the NSWPF (Crime Managers, Police Department supervisors, Covert Application Unit, Drug and Firearms squad, and a senior lawyer with the Crime Disruption & Special Inquiries unit), six Authorised Magistrates, and the DSPO Oversight Commissioner. We used data from the interviews to report on stakeholder perceptions of:

- whether DSPOs were applied for and granted in appropriate matters;
- police actions initiated under the DSPO scheme;
- the effectiveness of legal and operational processes of DSPOs in enabling disruption of drug supply;
- any positive and/or negative unexpected consequences from the DSPO scheme;
- any barriers and/or facilitators to successful uptake of DSPOs; and
- possible improvements that could be made to the scheme that may enable disruption of drug supply.

It was not possible to speak with DSPO subjects for this evaluation. This limits our understanding of the scheme's impact on subjects. Instead, we relied on the views of the stakeholders whom we interviewed, which may not accurately reflect subjects' perception and/or experiences with the scheme.

RESULTS

DSPO applications and orders

Outcomes of DSPO applications

Table 1 presents the number of DSPOs that were applied for in the four pilot sites, by their status at the end of the pilot period. In the two-year period, police initiated 27 DSPO applications across the four trial sites. Of these, 15 (58%) were granted by an Authorised Magistrate. Bankstown PAC submitted the most applications (eight), followed by the Coffs/Clarence, Hunter Valley and Orana Mid-Western PDs who each submitted six applications. The maximum duration for a DSPO is two years. Only one order was granted for the full two-year period. The majority of orders (11) were granted for just 12 months and three for only 6 months.

Authorised Magistrates indicated that the applications they received were completed appropriately and there was only one instance where an Authorised Magistrate requested additional information. An interviewee from the Covert Application Unit suggested that application efficiency and success rates were facilitated by a well-developed application form, which was designed collaboratively by the Covert Application Unit and Oversight Commissioner, as well as the provision of site training and manuals covering how to apply for and execute orders.

A high proportion of applications (39%) were cancelled for reasons other than application insufficiency. Six did not proceed beyond the Oversight Commissioner because an Authorised Magistrate had not yet been appointed to review DSPOs under the scheme. One was cancelled by NSWPF prior to an application being submitted to the Oversight Commissioner. Another two were cancelled because the target went into custody before the application was completed rendering the DSPO obsolete. One other application was cancelled as to not disrupt another controlled operation. Only two applications were declined by an Authorised Magistrate, one because the Authorised Magistrate was not satisfied that the subject was involved in drug supply and/or manufacture at the time of the application, and one with no reason provided.

⁸ See Appendix 1 for the interview instrument used in the study.

Table 1. DSPO applications by PAC/PD and outcome

PAC/PD	Granted	Cancelled	Declined	Total
Bankstown PAC	5	2	1	8
Coffs/Clarence PD	4	2	0	6
Hunter Valley PD	4 ^a	2	0	6
Orana Mid-Western PD	2	3	1	6
Not specified	0	1	0	1
Total	15	10	2	27

Note. a - This includes one revoked application.

When asked whether the scheme had been implemented effectively, stakeholders had mixed views because only a small number of applications had been made and granted. A variety of factors limited the number of applications that the police were able to make during the pilot, including geography, alternative police powers, and intelligence (these factors are considered in more detail in the following sections).

On the one hand, I think they've been quite effective on the people they've been used on. But I wouldn't say they were a massively successful thing, simply because the numbers are so small... that's because of the limitations to the geographical areas, the fact that we're not seeking to get these powers against people that we've already got other specialists search powers in relation to and sometimes, of course, the intel gathering can take a long time as well.
(NSWPF interviewee)

Despite these limitations, both the NSWPF and Authorised Magistrates suggested that the small number of applications likely reflects the fact that orders were being applied for only where appropriate:

... to me there doesn't appear to be an abuse of power, which would indicate that even if it expands the fact that there's been so little would, I think, challenge any potential media outcry that there's been an abuse of power.
(NSWPF Covert Application Unit)

I would hate to see a large number of applications being made. I think these applications should be made in exceptional circumstances where the police have tried everything and it's not working.
(Authorised Magistrate)

According to s 7(2) of the Drug Supply Prohibition Order Pilot Scheme Act, the application must include a description of “any practicable alternative means that may be reasonably available to prevent, or obtain evidence of, the eligible person engaging in the manufacture or supply of a prohibited drug as well as details of attempts made to use the alternative means.” The most cited alternative powers were the FPO and Weapon Prohibition Orders (WPO).⁹ Approximately half of the NSWPF interviewees noted that the pool of targets was limited by many prospective targets already being subject to FPOs and thus ineligible for a DSPO.

Approval time

Once the application has successfully passed through the Covert Application Unit and Oversight Commissioner, the application is allocated to an Authorised Magistrate for review. The median time for a DSPO application to be determined by an Authorised Magistrate was 34 days after it was received, with eight taking more than two months. Bankstown PAC had the longest median time to determination (77 days), and Coffs/Clarence had the shortest (21 days).

⁹ A WPO is an order made by the NSW Police Commissioner of police pursuant to s 33 of the Weapons Prohibition Act 1998 (NSW). While similar to an FPO, a WPO has slightly less restrictive conditions, with just two conditions specified: (1) that the recipient cannot possess or use a prohibited weapon; and (2) it is prohibited to sell or give possession of a prohibited weapon to a person, knowing that they are subject to a WPO.

NSWPF interviewees indicated that the time taken to approve applications was too lengthy. It delayed police acting on the intelligence which motivated the order, thereby reducing the effectiveness of DSPOs in disrupting drug supply. Intelligence is often time sensitive, with action often required “pretty much straightaway... unless there was some strategic investigating process in the background” (NSWPF interviewee). Two reasons for delay were identified by stakeholders: 1) Authorised Magistrate availability; and 2) requests for supporting information.

The most common problem impacting Authorised Magistrates’ review times was the lack of accommodation for review time within a magistrate’s standard court workload. Authorised Magistrates noted that DSPO reviews are a time-consuming process involving a lot of reading and consideration, and given their importance, magistrates need to fully apply themselves. However, with regular Local Court workloads (which vary by location) taking precedence, Authorised Magistrates were faced with the additional burden to review DSPO applications in their own time. As one Authorised Magistrate said, “It’s a challenge, because you don’t get any reduced court time in the Local Court to do this, so you just fit it in, you know, after hours, basically”. This also meant that in nominating an Authorised Magistrate for review, the Oversight Commissioner had to liaise with them to gauge whether they had capacity to complete the review within a reasonable time frame. This was particularly important in instances where the application was urgent. This process proved challenging, given the unpredictability of Local Court workloads and the small number of magistrates authorised to review these applications, but was managed in accordance with the operational needs of the police.

The other reason for delays in orders being granted was requests from Authorised Magistrates for police to provide additional information. Both the time taken for police to prepare and submit the new evidence, and the time taken by the Authorised Magistrate to re-review the application contributed to delays. However, this only occurred in one DSPO application. In this instance, police viewed the request as an unnecessary resource burden and resulted in a deliberation that took nearly two months (59 days):

But then wanting the court papers to substantiate what we’ve written, that is very time consuming for an officer... It’s certainly not a simple process. It’s not something you can just click on the intranet, or the internet and download or it’s not... It wasn’t accessible electronically. They wanted the actual physical copies of the physical files. That was very time consuming. So I don’t think that was necessary at all. No. (NSWPF Covert Application Unit)

In this instance the lack of electronic court records prevented ease of access to vital evidentiary materials. This reveals an important issue concerning court record keeping which has broader implications than just DSPO applications.

Revocation process

The DSPO scheme includes a revocation process to ensure ongoing accountability of orders. Only one of the 15 applications was revoked. The revocation occurred 189 days after the order was granted. Police in the Bankstown PAC initiated this revocation because the target entered custody for unrelated offences and they considered the order no longer applicable.

The question as to whether an order should remain in place if the subject enters custody (either remanded or sentenced custody) was not addressed in the legislation. Seven interviewees from the NSWPF agreed that if a person was in custody it was necessary to consider the likely duration they would be held on remand, in conjunction with the order term, when deciding whether to revoke an order. If the remand period extended beyond the order expiry date, then the order should be revoked. This would prevent active orders being inappropriately used while a person was held in custody. This highlights the need for police to continually monitor the validity of DSPOs as a subject’s circumstances can change in ways that render an order invalid. Consider for example:

It could be because the person has died, or the orders been made, and then they’re in custody. So basically, it’s cancelled. Because you have, that’s the thing, because it’s such a long process... These targets, these people, their circumstances may change. It could be that there’s some other information that makes the order invalid for whatever reason. (NSWPF interviewee)

Stakeholders involved in the revocation process were split on its efficiency. Two were satisfied that the process occurred quickly (“Yeah, we have one revoked because I think the offender got locked up... And that went through fairly, fairly quickly”), while another reported it was lengthy and time-consuming (but did not elaborate on their reasoning).

The Oversight Commissioner interpreted the lack of revocation applications made by themselves, or the subject of an order during the pilot, as evidence that DSPOs were being granted in appropriate circumstances. The Oversight Commissioner noted, however, that given the small number of DSPOs granted, and the single revocation, this process was insufficiently tested during the pilot and required further monitoring.

Serving orders

Of the 14 DSPOs that were granted and not revoked, 10 were served within 30 days of being granted and a further three were served in the second month following the granting of the order. In other words, 93% of DSPOs were served in the first two months from approval. There were, however, outliers, with one DSPO taking 185 days to be served.

Police interviewees generally reported serving the DSPOs in a “serve and search” model. That is, once the DSPO was granted, police waited for intelligence that a person was supplying drugs from a particular premises or vehicle before concurrently serving the DSPO and searching the person. Informed by successful FPO operations, this strategy aimed to maximise the value of a warrantless search.

*Same as a firearms prohibition order, we would do the serve and search at that time... we would try and time it to intelligence, behaviour patterns, to get the best outcome that we could. And then any other subsequent searches were based on [additional] intelligence surrounding that person or observations.
(NSWPF interviewee)*

*So they're using drug runners to do their deliveries, and their drugs are being stored in safe houses. So it was a combination of covert strategies. Look, identifying where everyone was living, who the drug runners were. And once we were comfortable in ticking all those boxes, then we would use the DSPO powers to go out and search houses, stop people and make arrests. So that, that was sort of the strategy.
(NSWPF interviewee)*

Police indicated that serving the order without conducting a search gave the subject time to alter their behaviour and move evidence before a search could be conducted.

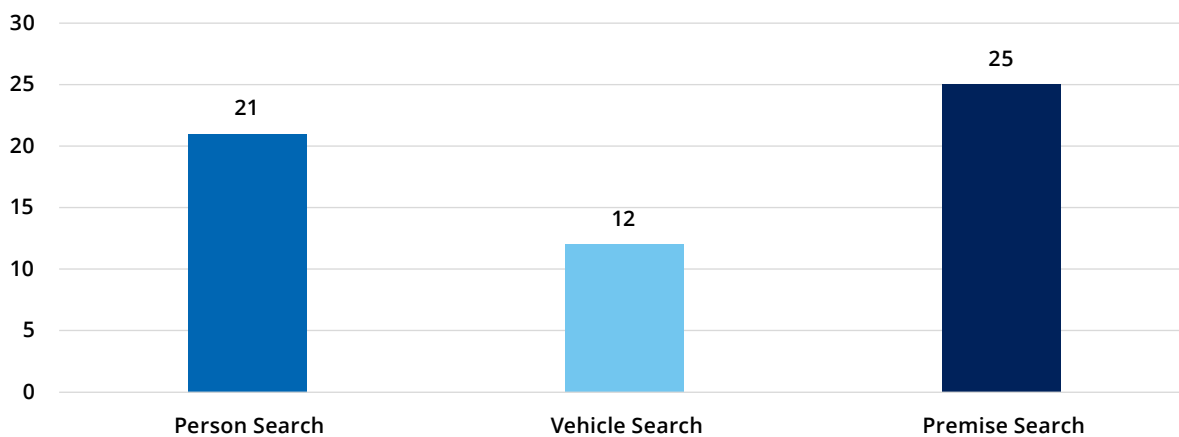
Police actions

Next we consider any actions initiated by police in matters where an order was granted. First, we examine the type and volume of searches conducted against each subject and overall; and the number and outcome of legal actions resulting from these searches. Then we explore whether stakeholders observed any changes in behaviour or patterns of drug supply and manufacture in the trial sites, or more broadly, and any issues that arose when enforcing DSPOs.

Searches

Figure 3 presents the number of police searches undertaken against DSPO subjects. A total of 58 DSPO searches were conducted against 12 of the 14 subjects (86%). This included 21 person searches, 12 vehicle searches and 25 premise searches. Twenty-nine per cent (or 17) of the 58 searches were conducted against a single subject, including 10 premise searches and seven person searches. The remaining 41 searches were conducted against 11 other subjects. Eight of the 12 subjects (67%) received less than five searches.

Figure 3. Number and type of DSPO searches undertaken by police



Most NSWPF interviewees (7 of 10) agreed that once DSPOs were in place, they were able to act quickly upon new intelligence, in a way that was flexible to other demands on their time. The lack of need to keep applying for search warrants was considered an advantage of the scheme. However, one officer did note that the scheme allowed police to act on new evidence of drug supply that may not necessarily meet the “required standards for a search warrant” (NSWPF interviewee). This raises concerns as to whether police were obtaining sufficient evidence before conducting searches, so as to not harass or breach the privacy of subjects, and ensure the legitimacy of operations.

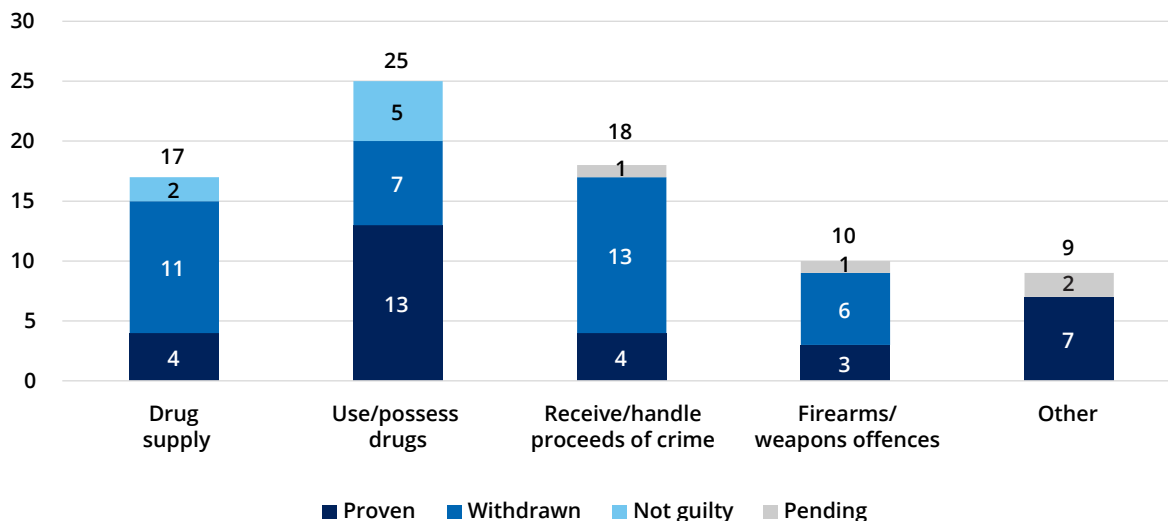
Police mentioned a number of barriers to serving and subsequent searching. The lengthy application process was a key barrier to acting upon intelligence to disrupt drug supply; “I think we would probably have missed opportunities to seize drugs because of that process, how long it takes to go through” (NSWPF interviewee). This delay meant police needed to await new intelligence about a subject’s supply activities to effectively exercise DSPO powers. In addition, police in the Hunter Valley PD explained that the wide geographical area they covered meant that enforcing DSPOs is labour intensive, and without a specialist drug unit, competing priorities and a lack of resources, inclusive of staff shortages, prevented them quickly acting upon good intelligence and conducting searches. In contrast, officers in the Bankstown PAC reported missing search opportunities because they were unable to act on intelligence when a subject moved outside of the site’s geographical borders. We discuss this issue further in relation to patterns of supply and manufacture.

Legal actions

Figure 4 shows the number of charges that arose from DSPO searches and their outcomes. Of the 58 searches, 12 (21%) resulted in 79 charges being laid against nine DSPO subjects. Nearly forty per cent of charges (31 charges) resulted in a proven outcome for eight subjects. Only four proven outcomes were for drug supply offences. These occurred against two DSPO subjects, who both received a penalty of imprisonment. The most common proven outcomes (13) were for use/possess drugs. Where these proven offences did not have a concurrent proven outcome for drug supply, the subject received a monetary fine, Intensive Correction Order, or conviction only.

Nearly half of all charges (47% or 37) were withdrawn. The most common withdrawals were for receiving or handling proceeds of crime (13), followed by drug supply (11). A small number of charges (4) had not been finalised at the time the data was extracted for this study.

Figure 4. Number of charges arising from DSPO searches, by offence type and court outcome



Drug supply and manufacture incidents in the pilot sites

In this section we consider trends in police recorded incidents of drug supply and manufacture in the pilot sites. While some caution is warranted when using recorded crime data as an indicator of the level of drug supply in an area since incident counts can be heavily influenced by police activity,¹⁰ these data allow us to explore two questions: (1) whether the pilot sites were, as initially claimed, drug supply problem areas; and (2) whether there is any evidence that the introduction of DSPOs had an aggregate-level impact on drug supply patterns (i.e., at a PAC/PD level).

Table 2 presents the number of incidents of drug supply and manufacture¹¹ recorded in each of the four pilot sites for the five 12-month periods from 1 July 2019 to 30 June 2024. Also presented are the relative rankings of each policing region out of a total 58 PAC/PDs across NSW, where a rank of one would indicate the policing region with the largest number of recorded drug supply and manufacture incidents. These data show the following:

- Orana Mid-Western PD ranked the highest of the pilot sites in the 12 months to June 2020, at third, recording a total of 449 incidents. The rank for this PD decreased 19 positions (to 22nd) by the end of June 2024, with only 58 incidents recorded.
- Bankstown PAC ranked 28th in the 12 months to June 2020 (at 73 incidents) and this rank increased to 7th by the end of June 2024 (recording 139 incidents).
- Hunter Valley PD ranked 32nd in the 12 months to June 2020 (recording 63 incidents). This rank increased slightly to 27th by the end of June 2024, with a total of 52 incidents recorded.
- Coffs-Clarence PD ranked 48th in the 12 months to June 2020 (recording 35 incidents). This rank increased to 9th by the end of June 2024, with 112 incidents recorded.

¹⁰ This is because the number of illicit drug incidents recorded by police is heavily influenced by policing activity in an area. A high volume of incidents may indicate a drug supply problem in that PAC/PD but could also reflect police in that PAC/PD being more proactive in targeting drug offenders.

¹¹ This includes incidents of: Dealing, trafficking in cocaine; Dealing, trafficking in narcotics; Dealing, trafficking in cannabis; Dealing, trafficking in amphetamines; Dealing, trafficking in ecstasy; Dealing, trafficking in other drugs; Cultivating cannabis; Manufacture drug; and Importing drugs.

Table 2. Number of incidents of drug supply and manufacture recorded in the four pilot policing regions and relative statewide ranking of policing regions by number of incidents

	Incident counts					Ranking (out of 58)				
	2019-20	2020-21	2021-22	2022-23	2023-24	2019-20	2020-21	2021-22	2022-23	2023-24
Orana PD	449	359	59	67	58	3	2	38	26	22
Bankstown PAC	73	127	228	138	139	28	19	8	9	7
Hunter Valley PD	63	70	81	33	52	32	36	28	45	27
Coffs-Clarence PD	35	68	65	114	112	48	38	35	16	9

The June 2020 rankings of 28, 32 and 48 for the Bankstown PAC, Hunter Valley PD and Coffs-Clarence PD, respectively, raises the question as to whether the areas selected for the trial were appropriate. Police interviewees felt confident that the four pilot sites were high volume drug supply areas. However, several other stakeholders noted that by the time the scheme came into effect (in May 2022), drug supply in the regional pilot sites was no longer a significant issue and that this may explain the low number of DSPO applications initiated by police during the pilot. The data shown in Table 2 suggests that the latter point is particularly relevant to the Orana Mid-Western PD, which moved from third rank in June 2020 to 38th by June 2022. Reflecting on the shifting patterns in regional/rural areas, one Authorised Magistrate stated:

The rural settings did have a problem of methamphetamine, or ice, a few years before the actual trial programme had commenced. That was something that [had] pretty much passed on or had been dealt with. By the time the trial commenced, they didn't really have the drug problem they'd had previously. They simply had a paucity of targets.
(Authorised Magistrate)

Some Authorised Magistrates felt that based on the matters they heard in their courts, other Sydney and regional areas may have been more appropriate sites for the pilot. Using the Coffs-Clarence PD as an example, its 48th ranking in 2019 does not indicate a significant drug supply problem, at least as reflected by the number of detections. Two Authorised Magistrates suggested political motives may have influenced Coffs-Clarence's selection as a trial site.

It was political as to why they put them in the particular areas that they did, like they want some in the country... but I wouldn't have necessarily thought that would have been the targeted area that I would have would have chosen...
(Authorised Magistrate)

Turning to the question of whether patterns of drug supply changed over the pilot period, we can see from Table 2 that only one pilot site, Orana-Western PD, experienced a decline in incident counts over the 5-year period examined, decreasing from 449 incidents in 2019/20 to 58 incidents in 2023/24. However, this decline occurred from 2021/22 onwards, before the DSPO trial commenced. In contrast, incident counts in the Bankstown PAC and Coffs-Clarence PDs rose over the 5 years to June 2024, from 73 to 139 in the Bankstown PAC and 35 to 112 in the Coffs-Clarence PD. This upward trend was observed from 2019/20 onwards in the Bankstown PAC, but in the Coffs-Clarence PD this uptick coincided with the introduction of DSPOs in that area. Meanwhile, incident counts in the Hunter Valley PD remained relatively stable over the five years to June 2024, dropping slightly in the first year of the pilot period. While these data provide little evidence for substantial reductions in drug supply and manufacture incidents in the pilot sites after DSPOs were introduced, again these trends should be interpreted with some caution as recorded drug incidents are dependent upon police detection and are thus not an accurate representation of the incidence of drug supply offences.

Subject selection and order enforcement

Variation across pilot sites, both in terms of the geographical area covered and the population serviced, may have limited the effectiveness of DSPOs to disrupt and deter drug supply. In the regional PDs NSWPF interviewees reported that their large geographical areas and the subsequent reduced mobility of residents meant that target movement beyond DSPO borders (which would render powers unusable) was not a significant concern. However, target selection was limited by: a) the small residential population in these regional areas; and b) practical considerations, such as the type of property where a potential subject resides (e.g., large rural properties are difficult to search because drugs can be hidden throughout the property). It was therefore considered to be more practical for police in these areas to “pick targets that had houses or units, because it’s so much easier to search” (NSWPF interviewee). Further, resourcing issues meant that the number of active orders had to be limited to only two per area (NSWPF interviewee) to ensure the PAC/PD was able to effectively enforce the DSPOs:

We wanted to do it in manageable chunks. I didn't want to have, you know, five or ten DSPO targets that we, because of the trial, we weren't effectively going to manage and exercise the powers in an appropriate way.

(NSWPF interviewee)

In comparison, Bankstown has a larger residential population but covers a much smaller geographical area. Movement of subjects across PAC boundaries was a particular challenge in this pilot site. Police noted that there were three Bankstown DSPOs where the subject was served the order (which included a map detailing where the order was enforceable) and then, shortly after, he/she moved outside of the PAC boundary (NSWPF interviewee). The extent of the border problem is highlighted by these police comments:

If you stand on one side of the street, you're covered [by] the use of DSPO power. If you're standing on the other side of the street, in a different Police Area Command, those powers are no longer accessible.

(NSWPF interviewee)

In the metropolitan area, it just gave the ability, unfortunately, for them to travel outside, you know, it's very easy. I mean, even though they may not be small, like [rural sites] we're a large, large command. But in essence, [in metropolitan sites] you can drive from one end to the other, you know, in 20 minutes or so. Yeah. So, but I think for the regional areas, they don't move, they have a tendency not to move out of those areas. They stay within their regions.

(NSWPF interviewee)

In the Bankstown site, the high likelihood of a subject moving out of an area, combined with the effort required to make an application, deterred some police from using DSPO powers. “If a person simply just moves out of their LGA, I've just invested all that week’s targeting data, it’s not worth the paper it’s printed on. So it’s very difficult to maintain the motivation because literally criminals, they just move out” (NSWPF interviewee). Further, a NSWPF Crime Manager indicated that where a target was eligible for both an FPO and a DSPO, police were likely to opt for the FPO which has a swifter application process, is not geographically bound, and has no expiry period.

Some interviewees suggested that this problem of target movement across geographical boundaries made it difficult to assess the effectiveness of the scheme. On one hand, the relocation of targets to new areas (outside of the scope of the scheme) could be interpreted as a benefit because the introduction of DSPOs has disrupted supply within that pilot site. This sends a signal to both suppliers and the public that police are working to disrupt drug supply in that community and this can act as a deterrent.

*It puts criminals on notice that proactively we can search, lawfully entitled... it also serves as a good community message... [that] police are proactive and targeting these people that are drug suppliers.
(NSWPF interviewee)*

*... modified and adjusted the drug supply activity of those people. One, I think, to an extent that they've certainly probably pulled back and stepped back out of fear because they have spent there the other one, as I said, modified and basically franchise subcontracted his work to someone else for a period of time.
(NSWPF interviewee)*

On the other hand, movement of subjects to a non-DSPO PAC/PD may simply displace the drug supply problem to another area. To avoid any displacement effect the geographical limitations of the scheme would need to be removed. As an Authorised Magistrate reflected "people who deal drugs don't limit themselves geographically, generally".

Police observed that an additional benefit of the scheme was that it assisted police to obtain evidence of other offending by the subject, such as break and enter. Evidence found during DSPO searches included not only drugs but also cash, stolen goods, weapons, and ammunition. In addition, police reported that DSPOs enabled them to gather additional intelligence on subjects' associates who may also be involved in illicit drug activities. This enhanced the deterrent effect of the scheme.

*Specifically, when you are monitoring or conducting surveillance, on those targets, who have DSPOs, you identify associates of them. Other people involved in drug possession, for example, when they're selling out of the house, we identified people coming to the house to purchase drugs. So you're gathering further intelligence, knowing who they are, what cars they're driving, who they're associating with. So, you know, another example would be when your targets out in a vehicle, your vehicle, stop on them, you know, whose car they're driving, who they're associating with, and that gathers further intelligence and you're targeting them, specifically under the DSPO and you're gathering evidence and intelligence in relation to ... who their associates are, and who they're possibly supplying to. So larger drug supply networks or other criminal networks.
(NSWPF interviewee)*

Appropriateness of the DSPO legislative framework, procedures, and safeguards

A key issue identified in relation to DSPOs was whether appropriate safeguards could be put in place to ensure that DSPOs are only used in appropriate and exceptional circumstances. Most stakeholders agreed that the application processes (inclusive of legislation and safeguards) were justified given the extensive powers afforded to police under the scheme, and ensured that only suitable targets were granted a DSPO. However, some limitations were identified which require further policy attention and re-evaluation.

Legislative criteria

All stakeholders interviewed agreed that the subjects selected for DSPO applications generally met the eligibility criteria, including the more subjective criterion of being highly likely to engage in further supply.

Data provided by NSW police for this review showed that all 14 persons granted a DSPO were adults with prior legal actions for drug supply offences (with all but one also having legal actions for use/possess drug offences).¹² Twelve subjects had a drug supply offence within the last 5 years. Two Authorised Magistrates and two NSWPF interviewees indicated that the recent offending history of these subjects suggests that the requirement for a drug supply conviction within 10 years may be unnecessarily lengthy, with a 5-year conviction period possibly more suitable. Interviewees critiqued that the 10-year period does not reflect current supply concerns of police and disregards the potential for rehabilitation. Police however believed that the requirement for recent intelligence regarding a person's likelihood of engaging in supply activities ameliorated any risks of unfair targeting of individuals. One officer mentioned that police took into consideration the offender's behaviour in the period after their conviction, with suitability only determined by recent intelligence of re-engagement in drug supply activities:

You might have someone that's been convicted of a drug supply matter five years ago, and they've been out of jail for two years, and they're on the straight and narrow, you know, unless we had some information that they were actively supplying drugs, then I wouldn't target that person specifically because of that conviction, because you need to have sort of, they need to be recent intel. And our sources are pretty good indication of who is dealing, and our field intelligence officer and other strike forces that we're running for other offences.

(NSWPF interviewee)

Likelihood of engaging in manufacture or supply requires consideration of evidence of current engagement in the illicit drug market alongside previous convictions, with the provision of evidence being a point of conflict between police and magistrates. Authorised Magistrates we spoke to described relying on the following information from the police application to assess a person's likelihood of engaging in drug supply: information from recent police intelligence that the target was engaging in supply activities (8 Authorised Magistrates); subjects' prior convictions (4 Authorised Magistrates); and the facts surrounding previous convictions (5 Authorised Magistrates). The police facts were particularly important to Authorised Magistrates as they not only indicated that the person had been involved in supply but detailed their role. In one application, the Authorised Magistrate was not satisfied that the evidence provided in the application allowed for an informed decision about the target's involvement in drug supply, and requested that applicants provide further information on "the individual convictions to work out: was this particular person just a runner? Or was he in the middle of the operation? Or was he the head of the operation?" Police were critical of this requirement, believing that the affidavit should suffice, with requirements for further information posing an unnecessary and resource intensive burden, which questions police authority:

I mean, obviously I read that particular application. But my comments were that the affidavit was comprehensive. It provided for the convictions which included recent supply. We provided information stating that the drug supply have been going on for 10 years, there was source information... And you had evidence that drug supply was recent, because of a search warrant and drugs that were located. However, that information wasn't sufficient. And the magistrate required the current bail report of the target, the facts used by the courts in sentencing the eligible person... so what was mentioned in the affidavit basically, but they wanted the court papers to back that up. And to me... to require that information, is saying that you don't believe what the police officer is saying... this is a signed document... we're swearing on oath that this information is accurate.

(NSWPF Covert Application Unit interviewee)

¹² Unfortunately, data provided by NSWPF on criminal history (to meet the criteria of previous supply offence within 10 years) was restricted to those persons subjected to DSPOs (excluding the person who had their application revoked). It is assumed that police included a list of legal actions against a person in the DSPO application as evidence of prior convictions. However, the extent of this information was not provided and was subsequently unable to be examined. This skews our assessment of suitability toward those that successfully proceeded through the review process, and provides no insights to the reasons why an application may have been declined.

Two Authorised Magistrates argued that requests to provide supporting materials on past convictions were not unreasonable given that the application process prevents the subject or an independent party from challenging the facts and evidence contained within the application, and thus only depicts the one-sided perspective of the NSWPF applicant. It therefore acts as a mechanism to ensure procedural fairness for the subject.

A further concern raised in the interviews was whether the subjects who received a DSPO, were those for whom the scheme was designed to target. Authorised Magistrates were in agreement that the invasive powers of the scheme were not designed to target lower-level offenders. They considered the oversight process essential to ensuring applications were only granted against suitable subjects.

It is a significant power to remove the obligation to obtain a search warrant. And that power should be used discreetly against people that that present as a significant danger to the community, not your middle ranking hood who from time to time engages in some degree of supply. And I think that power, therefore should be properly oversighted.

(Authorised Magistrate)

While the police interviewees from the Covert Application Unit agreed that the scheme was designed to target "large scale drug supply", other NSWPF interviewees indicated that low-level drug suppliers were typically targeted as there was a higher likelihood that an application would be granted against these offenders. Both Authorised Magistrates and police interviewees acknowledged that the higher-level suspects which DSPOs should target are difficult to obtain substantial intelligence on, and that this presents barriers for preparing and enforcing applications.

Well, I would say street level... more so small quantities at a time. And we specifically chose those targets because if you're going for high end targets, they know police methodology. They're very cautious. They generally don't store their drugs where they live. And this was a case where it was a pilot scheme and we wanted to show the effectiveness of the DSPO and what we could utilise them for. So we specifically targeted lower end, who we knew were active, and we're more likely to get a result. In my operational experience, I believed it was going to be much more difficult to achieve a result under this scheme by targeting higher end targets. I mean, we really didn't have any recent intelligence on higher end targets. And they're a bit more labour intensive. But for these particular ones, we knew they were active, we had recent intelligence for them, we had some source information. And we believe that that was going to be our best way of getting a result under the scheme.

(NSWPF interviewee)

Furthermore, these higher-level suppliers/manufacturers are unlikely to have a previous conviction, thus even if police have secured intelligence indicating a person is "actively supplying", they may not meet other DSPO requirements, and are thus ineligible.

We haven't had one, where a known drug manufacturer has been targeted for a DSPO... Because manufacturing cases go before the courts for many years. So there's been no conviction. So, these are these are the stipulations in the legislation, that ok we have many targets that are involved in large scale supply, large scale manufacturing, but because of the stipulations, we haven't had opportunity at State crime, organised crime, to really apply some sort of sense to these things.

(NSWPF interviewee)

Oversight of the DSPO processes

The DSPO scheme includes two levels of oversight: (1) an independent Oversight Commissioner who oversees the application process and acts as an intermediary for all parties involved, including the DSPO subject; and (2) Authorised Magistrates who review applications and decide whether an order should be granted or declined.

Stakeholders generally agreed that the additional scrutiny of the Oversight Commissioner and the Authorised Magistrates ensured that appropriate targets were selected, and that police put forward well-structured, evidenced applications. The small number of stakeholders involved in the application process was also seen as an advantage as it ensured consistency and validity of processes. However, these additional checks resulted in delays. This was particularly true of the review process, where there were only eight Authorised Magistrates (and as few as one, at certain times during the trial) available to receive applications. The significant impact of these delays on police operations led some NSWPF interviewees to advocate for the DSPO process to be modified so as to resemble the FPO and WPO schemes, where only NSW Police Commissioner approval is required. Comparatively, an Authorised Magistrate argued that despite the oversight processes being cumbersome, it has proven to be an appropriate model for current and future schemes (including FPOs).

The Oversight Commissioner saw his role as an intermediary in “facilitating” without “influencing” the application process, and ensuring “decisions are made in circumstances where there’s integrity and efficiency”. He believed that these aims were achieved during the pilot. Authorised Magistrates suggested that the Oversight Commissioner had a positive influence on their decision making. Many of the Authorised Magistrates were newly appointed to the role of a Local Court magistrate, with limited experience in the policing and prosecution of illicit drug supply and manufacture offences, and minimal training on the DSPO legislative framework and processes. Four Authorised Magistrates expressed concern over ambiguous parameters of the legislation, such as whether DSPO search powers extended to other persons who were also in the vehicle or home of a DSPO subject. This made the legislation difficult to interpret and apply within the review processes. Given these concerns, some Authorised Magistrates felt that having applications pass through an authoritative figure with specialist knowledge (the Oversight Commissioner), who provided recommendations, offered them confidence about the suitability of an application.

I think the fact that the applications are reviewed by an Oversight Commissioner, that with someone who has specialised knowledge and oversight in the police unit, police conduct generally, has been appointed as the Oversight Commissioner for the purposes of this legislation... And the fact that someone with his expertise is reviewing the applications. He has far more knowledge and expertise in the areas of police operations and police conduct than I do. And the fact that he's overseeing them gives me comfort, that that there is sufficient and look, I look at it independently in any case, but it gives me comfort that someone with expertise, has reviewed it and will have if they thought it was you know, it was insufficient to send through to me, and I'm not sure how often he does that.

(Authorised Magistrate)

Another Authorised Magistrate noted that the Oversight Commissioner’s feedback on an application was particularly helpful in informing their decision.

I think one came through, where the Oversight Commissioner had some concerns about gaps in the information in the application. And that was really helpful to have his feedback before I decided whether or not to make the order.

(Authorised Magistrate)

Despite these additional levels of oversight, several of the Authorised Magistrates expressed concern that the nature of the review process undermines procedural fairness. Orders are made in a magistrate’s chamber, ex-parte, without the subject’s knowledge that an order has been applied for. While the success of the DSPO is dependent upon the subject being unaware of the application until it is served, this process was seen to undermine the “fundamentals of access to justice, open justice, ... seriously imped[ing] somebody’s liberties, so to speak” and was “somewhat contradictory to what our justice system’s about” (Authorised Magistrate). Another Authorised Magistrate advocated for the inclusion of a contradictor who could raise arguments against the application (without instructions from the subject of the application).

The fundamental problem with the whole scheme is the lack of procedural fairness to the person who's being the subject of the audit. And, of course, it would defeat the whole purpose of both the application and our chance to respond. But I don't know if there could be like, a contradict who could point out reasons why they say there's not enough evidence to fall and because you're just basing it on your own assessment. Well, when you're doing a case in court, you hear from both sides. And you do feel sometimes whether you kind of rubber stamp because you're only being given information from the person who wants the order. So they usually present it in the best possible light... I think there has to be some thought to, to give sound procedural fairness to these people. And I've thought about this, the only way it could be if there was an independent contradict, who would be given the same information and the ability to get information who might then do some submissions in opposition to what they say.
(Authorised Magistrate)

Despite concerns of procedural fairness, the Oversight Commissioner received no complaints from subjects about their orders.¹³ He observed this as evidence that “the orders were made against people that they should have been” (Oversight Commissioner). One subject however contacted their Local Council representative to raise concerns. This suggests that alternative avenues of redress may have been sought during the trial, and should be investigated further.

Geographic expansion of the scheme and possible improvements

Stakeholders interviewed were generally in agreement that the scheme should be expanded with some revisions. Suggested modifications to the scheme included: changes to the oversight process; expansion of the scheme to additional areas; addressing resourcing issues; and improving police education on DSPO enforcement.

The oversight processes, particularly the appointment of only a small number of Authorised Magistrates, led eight stakeholders to argue that the application process should be streamlined to reduce delays in the time between submission and determination. Stakeholders offered three potential revisions. First, having the NSW Police Commissioner rather than Authorised Magistrates grant orders. This would align DSPOs with FPOs, but remove external oversight. Second, having registrars rather than Authorised Magistrates review applications. This is consistent with standard search warrants; however, their powers are not as expansive as those of DSPOs. Third, removing the Oversight Commissioner from current processes since no other scheme includes such an intermediary.

Stakeholders agreed that geographical expansion is necessary, however, they differed on what that should look like. During implementation, “there was reluctance to see [the DSPOs scheme] rolled out across the state based on [government and public] policy views in relation to police powers” (NSWPF interviewee). Three Authorised Magistrates proposed selective expansion, which should be informed by evidence of a significant drug supply problem. This would reduce the burden on police and court resources, and allow for further evaluation. In contrast, nine stakeholders (3 Authorised Magistrates, 6 NSWPF interviewees) were in support of statewide (or at a minimum, regional) expansion. Drug supply and manufacture is not geographically limited (Authorised Magistrate) and criminals are transient and adaptive to police activities (NSWPF interviewee). Statewide expansion would remove the geographical limitations of the scheme enabling police to enforce the orders outside pilot sites, as well as use the orders in parts of the state with emerging drug supply problems. This would alleviate concerns of targets travelling outside of PAC/PD boundaries and remove confusion as to whether a DSPO can be enforced in a particular area.

There are three key resourcing issues that currently make statewide expansion impractical. First, the scheme has only had a total of eight magistrates authorised to review applications, with the expectation that they review DSPO applications after court hours. Subsequent delays have prevented police acting upon intelligence. Further delays could be expected if statewide expansion occurs without additional magistrate authorisations. This additional workload could also deter other magistrates from agreeing to

¹³ The Oversight Commissioner's details were made available for subjects to raise concerns.

be appointed. Second, the Covert Application Unit within the NSWPF is a small specialist unit responsible for overseeing FPOs/WPOs and providing support for serious and organised crime investigations. It was never designed to deal with the variance seen in DSPOs where “street level dealers, middle level dealers, high level drug traffickers, [and] importers” could be targeted. There would need to be “a realignment of the application process or something that removes the specialist capability out of it” (NSWPF interviewee), as well as additional resourcing to establish a team dedicated to DSPOs. Third, police do not have the necessary resources to prioritise DSPOs. Trial sites were, at times, required to reallocate resources to other priority areas, preventing police acting upon intelligence and limiting their number of active DSPOs. Statewide expansion would require dedicated resourcing across NSWPF to enforce DSPOs.

The pilot also revealed that there was some confusion surrounding when DSPO search powers should be used and in what circumstances, and that police were sometimes unaware that a subject was on a DSPO at the time of searching a vehicle or person. In such instances, officers used police powers under the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) (LEPRA) instead. Some police said that this was partly a reflection of not all police being trained in DSPO enforcement. It is plausible that expansion into all policing regions would increase knowledge of DSPOs and reduce confusion. However, additional training to all NSWPF covering the DSPO legislative framework, enforcement, accountability and responsibilities, would also be beneficial (NSWPF interviewee).

DISCUSSION

This process evaluation considered whether the two-year pilot of the NSW DSPO scheme was appropriately and effectively implemented and enforced. From the start of the pilot scheme in May 2022 to June 2024, 27 applications were made by the NSWPF and only 15 orders were granted by Authorised Magistrates with one later being revoked. A total of 58 DSPO searches were conducted, the majority of which (25) were premise searches. At least one DSPO search was conducted on 86% of subjects (12 of the 14). From these 58 searches, 79 charges were laid against nine DSPO subjects. Nearly half of these charges were withdrawn (47%), and slightly more than a third were proven (39%). Only four of the 31 proven convictions were for drug supply offences, with two DSPO subjects receiving a penalty of imprisonment for these offences.

There were several reasons for the small number of orders granted and convictions secured during the pilot. First, many of the prospective targets eligible for a DSPO were either already subject to a FPO or were eligible for one. Use of a FPO was viewed more favourably by police because it involved a streamlined and swifter process, was not geographically bound and had no expiry period. Second, the selection of only four DSPO sites restricted the pool of potential targets and the capability of police to respond to geographically shifting offending patterns. We found some evidence to suggest the regional areas selected for the trial may not have had significant problems with drug supply or that drug supply patterns had shifted by the time the trial commenced. Geographical boundaries imposed in the pilot also limited the effectiveness of the orders, as some DSPO subjects moved to areas outside of pilot sites rendering DSPO powers ineffective. Third, gathering the intelligence required in a DSPO application to demonstrate active involvement in drug supply was a time-consuming process for police, and shifting of priorities sometimes resulted in the reallocation of resources.

In May 2024, the DSPO pilot scheme concluded and any active DSPOs ceased to apply. Without legislative amendments to extend the pilot, the Drug Supply Prohibition Order Pilot Scheme Act governing the scheme is set to be repealed in May 2025. Any extension should be considerate of whether the scheme is likely to meet its primary aim to disrupt and deter illicit drug supply and manufacture in NSW. While the small number of orders and convictions made under the pilot impeded a robust evaluation of this outcome in our study, most interviewed stakeholders believed that the DSPO scheme could have a place in NSW policing. However, they emphasised that modifications to the scheme and clarification of its purpose would be required for it to meaningfully meet its listed aims.

Stakeholders reported that the legislative framework underpinning the DSPO scheme was difficult to interpret and required police officers and reviewers to apply subjective judgement in some situations. Police confusion also surrounded the circumstances in which DSPO powers should be applied in lieu of LEPR or FPO powers. While the boundary issue contributed somewhat to this confusion, there was also a belief that the DSPO enforcement powers were not well understood by officers both within the DSPO sites and more broadly, and that further training on the scheme was required. Police would also benefit from improved identification processes, which would allow them to more efficiently determine whether a person is the subject of a DSPO prior to any searches being conducted. This is of course difficult in circumstances where subjects refuse to provide any form of identification to the police.

A key eligibility criterion for a DSPO is a conviction for a serious drug supply offence in the 10 years prior to an application being made. Four interviewees agreed with the concerns initially raised by the Law Society of NSW (2020) that this eligibility criterion was too broad and should be modified. This concern was supported by data from the pilot showing that 12 of the 14 DSPO subjects had a prior drug supply conviction within the last five years. Interviewees critiqued that the 10-year period does not reflect current drug supply concerns of police and does not acknowledge that offenders can change their behaviour, particularly after serving a period of time in custody. The requirement for intelligence indicating recent engagement in supply and the two stages of independent oversight proved valuable in safeguarding against the inappropriate targeting of subjects.

However, several police stakeholders indicated that the requirement for a previous serious drug supply conviction also restricted the pool of subjects eligible for a DSPO and discouraged their use when targeting higher-level offenders. Police interviewees revealed that lower-level supply offenders were typically targeted for DSPOs because it was often difficult to gather sufficient intelligence on persons engaged in higher-level drug supply and manufacture activities, and to secure a conviction. Police therefore argued that alternative and more recent types of evidence should hold greater weight than a prior conviction, when demonstrating the likelihood of a person engaging in drug supply. Meanwhile, Authorised Magistrates maintained that the powers granted by a DSPO were so invasive that they should be reserved for those involved in serious drug supply who are considered a significant danger to the community. These conflicting views suggest that there is some ambiguity surrounding the intended targets of the scheme.

To reduce delays in the application process police advocated for an internalised review process, similar to FPOs, whereby orders are reviewed and granted by the NSW Police Commissioner. Authorised Magistrates and the Oversight Commissioner argued that independent oversight was fundamental to ensure appropriate application and implementation. This was supported by stakeholders' observations that appropriate targets were being selected for DSPOs and that the additional levels of oversight ensured police put forward well-structured, evidenced applications. Two primary reasons for the delays in applications were identified in the current review. First, a limited number of magistrates consented to be appointed as an Authorised Magistrate under the scheme, and those who did were required to accommodate reviews within their normal court workload. Delays to determination were also caused by the police's inability to quickly access facts of past matters to support DSPO applications. In one application police were significantly burdened by having to go to several Local Courts to obtain physical records of police facts, as electronic records were not available. Strategies to address these two issues could increase efficiency of the review process whilst retaining the considerable benefits offered by independent oversight.

Our review was limited by the small number of DSPO applications granted during the pilot period, the availability of data (which was skewed toward successful applications), and the involvement of few stakeholders in the interviews (the majority of which were NSWPF representatives). These limitations, considered alongside the implementation issues identified by our review, prevented a rigorous evaluation of whether the DSPO pilot scheme achieved its aims. Therefore any extension of the scheme would benefit from additional monitoring and evaluation. This should include an outcome evaluation assessing the extent to which DSPOs are effective in deterring offenders from re-engaging in drug supply and

manufacture. If extended, consideration should also be given to geographical expansion outside of the pilot sites. Acknowledging the limited data available for this review, selective expansion into additional policing regions may be more appropriate than an immediate statewide rollout. Finally, while this review has examined the appropriateness and effectiveness of the DSPO pilot scheme implementation, little is known about the experience of DSPO searches. Future examination of the DSPO pilot scheme or any extension of these police powers would benefit from a review of police narratives or interviews with DSPO targets to gain a greater understanding of the nature of the interaction between targets and police during DSPO searches.

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REFERENCES

Farlow, S. (2020). *Drug Supply Prohibition Order Pilot Scheme Bill 2020 – Second Reading Speech*. NSW Parliamentary Debates, Legislative Council, 22 October 2020. Retrieved from Parliament of NSW website: <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-83739>.

NSW Ombudsman. (2016). *Review of police use of the firearms prohibition order search powers: Section 74A of the Firearms Act 1996*. Retrieved from the NSW Ombudsman website: https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0003/138297/Review-of-police-use-of-firearms-prohibition-order-search-powers.pdf.

Parliament of NSW. (2020). *Drug Supply Prohibition Order Pilot Scheme Bill 2020 – Second Reading Debate*. NSW Parliamentary Debates, Legislative Assembly, 18 November 2020. Retrieved from Parliament of NSW website: <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-114589>.

The Law Society of New South Wales. (2020). *Inquiry into Drug Supply Prohibition Order Pilot Scheme Bill 2020* (Crim:RHrg: 1994715). Retrieved from the Parliament of NSW website at: <https://www.parliament.nsw.gov.au/lcdocs/submissions/69476/0001%20The%20Law%20Society%20of%20New%20South%20Wales.pdf>.

APPENDIX

Interview instrument

Thank you for agreeing to take part in this study on the Drug Supply Prohibition Order (DSPO) scheme. Your experience will be invaluable for helping us to understand whether the DSPO trial has been implemented as intended.

The interview will take approximately 60 to 90 minutes. The interview is being recorded for transcription purposes, are you comfortable with this?

In our publications we will not identify you to protect your anonymity, but we will describe your role in the DSPO pilot. Given your role within the scheme technically makes you identifiable, could you please confirm you would be comfortable with your role being identified in the research outputs?

In the interview I will ask you questions about your experience of the DSPO scheme either generally or within your Police Area Command/Police District; whichever is most applicable to your role. In particular, I will ask about your views on the barriers and/or facilitators to the successful uptake of DSPOs, the efficiency of the application process, the appropriateness of the legal framework, the operational benefits associated with DSPOs, any unexpected consequences of implementation, and any suggestions to improve the DSPO scheme.

Throughout the interview, there may be questions you are unable to answer because you have not been involved in that stage or process, if this occurs, please indicate its inapplicability and we will skip that question, or set of questions. [For this reason some stakeholders were not asked all of the questions]

The DSPO scheme has two purposes, i.e., to: (1) assist police to effectively and efficiently gather evidence of drug supply and manufacture and (2) to have a disruptive and deterrent effect on a person subject to a DSPO.

1. Can you describe your role in the DSPO trial? In particular, the stages or processes you have been involved in and any engagement you have had with other non-enforcement personnel participating in the scheme.

Application process:

2. In your experience, are the eligibility criteria for DSPOs being applied appropriately? That is, are the following 3 criteria being met?
 - The belief that the person is likely to engage in the manufacture or supply of a prohibited drug is reasonable,
 - The person is 18 years or older on application day, and
 - Has been convicted of a serious drug offence within 10 years of the application day
3. Who makes the decision that an application should be made? [only relevant to NSWPF]
4. How is the subject's likelihood of engaging in manufacture or supply offences assessed?
5. Should other eligibility criteria be considered in DSPO applications? Why?
6. In what circumstances or for which subjects are DSPOs typically sought?

Prompts:

- a) In circumstances where DSPOs have been considered necessary, what were some of the reasons alternative means were insufficient to prevent, or obtain evidence of, the eligible person engaging in the manufacture or supply of a prohibited drug? [mostly relevant to NSWPF]
 - b) Have there been instances where magistrates have rejected an application because there are other practicable alternative means that could be used to reduce the risk that the person will engage in the manufacture or supply of a prohibited drug? Explain
7. How well is the application process operating?

Prompts:

- a) Are processes consistently applied across all DSPO applications?
- b) Do these processes allow for the efficient lodgement of applications?
- c) What has worked well?
- d) What challenges have been encountered?
- e) How have these challenges been overcome?
- f) What can be done to prevent similar issues in the future?

The next set of questions consider the execution of DSPOs. Are you able to provide any comments on processes within the execution stage? [Only stakeholders with insight or involved in execution were able to speak to these questions e.g., crime managers & Oversight Commissioner]

8. Once orders are made, are they served on subjects efficiently? If not, what are some of the challenges?
9. When DSPOs are granted by an Authorised Magistrate, what prompts the use of execution powers outlined in s 4 of the *Drug Supply Prohibition Order Pilot Scheme Act 2020*?

Prompts:

- a) How do you decide whether to search a person, place, or vehicle, and when to conduct the search? What are the circumstances in which multiple search types would be required?
 - b) How do you decide that concurrent searches are required?
 - c) How are searches recorded in COPS? Is each type of search recorded independently? If multiple searches take place on consecutive days, are they all recorded in COPS?
10. To your knowledge, have DSPO searches resulted in legal proceedings against an alleged offender?

Prompts:

- a) Under what circumstances would a legal proceeding commence?
 - b) Are specific offences more likely to result in a DSPO related legal proceeding?
 - c) What factors have hindered legal proceedings? And are these factors only encountered with DSPOs?
11. The DSPO trial produced any unexpected outcomes for drug offending or other types of offending either within or outside of the pilot PACs/PDs? (e.g., spillover effect where drug offenders/offending moved to new areas).

12. How effective, in your opinion, are DSPOs in gathering evidence and disrupting and/or deterring the manufacture or supply of illicit drugs?

Prompts:

- a) Compared with existing police powers, what have been the advantages of a DSPO for gathering evidence?
- b) Have there been any disadvantages?
- c) What have been the advantages of a DSPO for disrupting and deterring drug supply and manufacture?
- d) Have there been any disadvantages?

Revocation process [as there was only one revocation, few stakeholders were able to speak to this question]

13. Do you have anything you would like to comment on with respect to revocations and the revocation process?

Overall effectiveness and possible expansion [Some of these questions could not be answered by all stakeholders]

14. In your experience has the trial of the DPSO scheme been successfully implemented? Why/why not?

Prompts:

- a) For example, stakeholders, processes, policies, community support etc
 - b) Have experiences differed across pilot areas?
15. In your experience, have the legal frameworks for DSPOs been appropriate for the application process and execution of orders? Why/why not?
16. In your opinion, should the DSPO scheme be expanded to other PACs/PDs?
17. Do you foresee any challenges if the scheme were to be expanded to other areas? (for example, delays in the processing and granting of applications due to higher volumes)
18. Do you have any further comments on the DSPO scheme?