REPORT TO:

THE HONOURABLE JOHN ELFERINK MLA
ATTORNEY-GENERAL and MINISTER FOR JUSTICE

COMPLIANCE BY NORTHERN TERRITORY POLICE FORCE WITH *SURVEILLANCE DEVICES ACT*

SECOND REPORT 2015

Date report issued: July 2015

INTRODUCTION

The *Surveillance Devices Act 2007* (the Act) came into operation on 1 January 2008. The purposes of the Act are:

(a) to regulate the installation, use, maintenance and retrieval of surveillance devices; and

(b) to restrict the use, communication and publication of information obtained through the use of surveillance devices or otherwise connected with surveillance device operations; and

(c) to establish procedures for law enforcement officers to obtain warrants or emergency authorisations for the installation, use, maintenance and retrieval of surveillance devices in criminal investigations extending beyond this jurisdiction; and

(d) to recognise warrants and emergency authorisations issued in other jurisdictions; and

(e) to impose requirements for the secure storage and destruction of records, and the making of reports to Judges, magistrates and Parliament, in relation to surveillance device operations.

Section 63(1) of the Act requires the Ombudsman to inspect the records of the Northern Territory Police Force (NT Police), to determine the extent of compliance with the Act by NT Police and its law enforcement officers.

The Ombudsman is required, under section 64(1) of the Act, to report to the Minister at six monthly intervals on the results of each inspection. Section 64(2) of the Act provides that the Minister must, within 7 sitting days after receiving a report, table a copy of it in the Legislative Assembly.

Since the last report issued in January 2015 there has been one inspection. It took place on 16 June 2015 and covered the period from 3 December 2014 to 16 June 2015.

BACKGROUND

A Police General Order, *Policy and Procedures* was gazetted on 4 August 2011 (number 16 of 2011). That General Order sets out procedures regarding the application process for warrants, responsibilities of the Registrar and record keeping and warrant administration requirements.

The Technical and Covert Section has the responsibility as the central repository for copies of documents including surveillance device warrants, other records such as affidavits and surveillance device “product”, as well as ancillary documentation.

REGISTER OF WARRANTS

Under Section 62 of the Act, NT Police are required to keep a register of warrants and emergency authorisations. The Register was examined by staff from my office on 16 June 2015. The Register documented 24 warrants for the relevant period. The Register recorded 3 emergency authorisations had been sought since the previous inspection of 2 December 2014. The register fulfilled the requirements of Section 62.

INSPECTION

Records inspected included documentation relating to 24 warrant applications since the last inspection. Of the 24 warrant applications;

- 6 authorised the use of a listening/optical device
- 13 authorised the use of a tracking device
- 1 authorised the use of a listening/tracking device
- 1 authorised the use of listening/optical and tracking device
- 2 authorised the use of a listening device
- 1 authorised the use of an optical device

Emergency authorisations were issued for:

- 1 listening/tracking device
- 2 listening/optical devices

No applications were refused or withdrawn.

DEFICIENCIES

Two minor issues were identified by police and brought to the attention of my staff during this inspection. Both issues related to applications for warrants being incorrect either through incorrect completion of a form which was no longer in use or through an officer's lack of knowledge on how to correctly complete paperwork. The errors were brought to the attention of the relevant officers and education undertaken.

FINDING

On the basis of the records inspected, NT Police and its law enforcement officers have complied with the requirements of the *Surveillance Devices Act*.

Peter Shoyer
Ombudsman
22 July 2015

INSPECTION OF THE RECORDS OF NORTHERN TERRITORY POLICE — REPORT ON COMPLIANCE BY SECTION

1. SURVEILLANCE DEVICE WARRANTS

1.1 - Section 22(1)(b)(i) Warrant records the name of applicant on warrant.

Inspection 16 June 2015: Original warrants inspected recorded the name of the applicant in compliance with this section.

1.2 - Section 22(1)(b)(ii) Warrant records the offence for which a warrant was issued.

***Inspection 16 June 2015*:** Original warrants inspected recorded the offence for which the warrant was issued in compliance with this section.

1.3 - Section 22(1)(b)(iii) Warrant records the date the warrant was issued.

***Inspection 16 June 2015*:** Original warrants inspected recorded the date the warrant was issued in compliance with this section.

1.4 - Section 22(1)(b)(iv) Warrant records on the warrant the kind of surveillance device authorised for use.

Inspection 16 June 2015: Original warrants inspected recorded the kind of surveillance device authorised to be used in compliance with this section**.**

1.5 - Section 22(1)(b)(v) Warrant records the name on the warrant the place where the warrant is to be used.

***Inspection 16 June 2015*:** Original warrants inspected recorded the name of the place where the warrant was to be used in compliance with this section**.**

1.6 - Section 22(1)(b)(vi) Warrant to record the use of a surveillance device on a thing or class of thing.

***Inspection 16 June 2015*:** Original warrants inspected recorded the name of the thing or class of thing where the warrant was to be used in compliance with this section**.**

1.7 - Section 22(1)(b)(vii) Warrant records the name of the person or, if the identity of the person is unknown, this fact.

***Inspection 16 June 2015*:** Original warrants inspected recorded the name of the person in compliance with this section**.**

1.8 - Section 22(1)(b)(viii) Warrant records the period during which it is was in force (which must not exceed 90 days).

***Inspection 16 June 2015*:** Original warrants inspected recorded a period not exceeding 90 days, in compliance with this section**.**

1.9 - Section 22(1)(b)(ix) Warrant records the name of the law enforcement officer responsible for executing the warrant.

***Inspection 16 June 2015*:** Original warrants inspected recorded the name of the law enforcement officer responsible for executing the warrant in compliance with this section**.**

1.10 - Section 22(1)(b)(x) Warrant records the conditions on the warrant subject to which a place may be entered, or a surveillance device may be used.

***Inspection 16 June 2015*:** Original warrants inspected recorded the conditions upon which a place may be entered, or a surveillance device may be used in compliance with this section**.**

1.11 - Section 22(1)(b)(xi) Warrant records the time within which a report is to be made to a Judge or Magistrate under the requirements of section 58.

***Inspection 16 June 2015*:** Original warrants inspected recorded the time in which the report is to be made to a Judge or Magistrate in compliance with this section.

1.12 - Section 22(2) Warrant is signed by a Judge or Magistrate.

***Inspection 16 June 2015*:** Original warrants inspected were signed by a Judge or Magistrate in compliance with this section**.**

2. EXTENSION, VARIATION AND REVOCATION OF WARRANTS

2.1 - Section 24(1)(a) Law Enforcement Officer applications for an extension warrant.

Inspection 16 June 2015: There was 1 application for an extension to a warrant during this inspection.

2.2 - Section 24(1)(b) Law Enforcement Officer applications for variations of any of the terms of a warrant.

Inspection 16 June 2015: There were no applications for variation of the terms of any warrants examined during the inspection of records.

2.3 - Section 25(4) Revocation by a Judge or Magistrate of surveillance device warrants.

***Inspection 16 June 2015*:** 8 warrants were revoked, of which 4 were inspected. In those cases the revocation was carried out prior to the expiry date of the warrant with the revocation instrument sighted during the inspection.

3. RETRIEVAL WARRANTS

3.1 - Section 30(1)(b)(i) Retrieval warrant records name of the applicant.

Inspection 16 June 2015: There were no applications for retrieval warrants recorded during this inspection period.

3.2 - Section 30(1)(b)(ii) Retrieval warrant records date of issue.

Inspection 16 June 2015: There were no applications for retrieval warrants recorded during this inspection period.

3.3 - Section 30(1)(b)(iii) Retrieval warrant records kind of surveillance device authorised to be retrieved.

Inspection 16 June 2015: There were no applications for retrieval warrants recorded during this inspection period.

3.4 - Section 30(1)(b)(iv) Retrieval warrant records place or thing from which the device is to be retrieved.

Inspection 16 June 2015: There were no applications for retrieval warrants recorded during this inspection period.

3.5 - Section 30(1)(b)(v) Retrieval warrants do not exceed period (90 days) during which the warrant was in force.

Inspection 16 June 2015: There were no applications for retrieval warrants recorded during this inspection period.

3.6 - Section 30(1)(b)(vi) Retrieval warrant records the name of the LEO primarily responsible for executing the warrant.

Inspection 16 June 2015: There were no applications for retrieval warrants recorded during this inspection period.

3.7 - Section 30(1)(b) (vii) Retrieval warrant records the conditions subject to which a place may be entered under the warrant.

Inspection 16 June 2015: There were no applications for retrieval warrants recorded during this inspection period.

3.8 - Section 30(1)(b)(viii) Retrieval warrant records the time which a report for the warrant must be made to the Judge or Magistrate under section 58.

Inspection 16 June 2015: There were no applications for retrieval warrants recorded during this inspection period.

3.9 - Section 30(2) Retrieval warrant signed by the issuing Judge or Magistrate.

Inspection 16 June 2015: There were no applications for retrieval warrants recorded during this inspection period.

4. EMERGENCY AUTHORISATIONS

4.1 - Section 34 – 35 Application and Authorisation for Emergency Authorisations.

Inspection 16 June 2015: Records of the application to the senior officer and the authorisation were sighted and met the requirements of sections 34 to 35.

4.2 - Section 37(1) Law Enforcement Agency applies to a Judge within 2 business days after giving an emergency authorisation for approval of the exercise of the powers under the emergency authorisation.

Inspection 16 June 2015: 3 Emergency Authorisations were sought during this reporting period. An application was submitted to a Judge in compliance with section 37, in each case within 2 business days.

5. DEALING WITH RECORDS OBTAINED BY USE OF SURVEILLANCE DEVICES

5.1 - Section 55(1)(a) the Chief Officer ensures that a record or report obtained by the use of a surveillance device is kept in a secure place.

Inspection 16 June 2015: Surveillance devices documentation is secured within the Peter McAuley Centre, Berrimah, under the security of the Technical and Covert Section. This inspection confirmed this process is still current.

5.2 - Section 55(1)(b) The Chief Officer ensures that a record or report mentioned in subsection 55(1)(a) is destroyed if satisfied it is not likely to be required in relation to a purpose mentioned in section 52(3), 53(1) or 54(1).

Inspection 16 June 2015: No records have been destroyed since the last inspection of 2 December 2014.

6. REPORTING AND RECORD-KEEPING

6.1 - Section 58(1) Law enforcement officer makes a report under this section to the Judge or Magistrate who issued the warrant, within the time stated in the warrant.

Inspection 16 June 2015: Of the 24 warrants the subject of report for this inspection period, records indicated:

- 18 warrants - a report to the Judge or Magistrate had been provided.
- 5 warrants - current and therefore do not fall within the ambit of this section.
- 1 warrant – expired however the report to the Judge or Magistrate is not yet due.

6.2 – Section 58(2)(a) The report to the Judge or Magistrate must state whether the warrant was executed.

Inspection 16 June 2015: All reports to the issuing Judge or Magistrate indicated whether or not the warrants relating to such reports had been executed.

6.3 – Section 58(2)(b)(i) If the warrant was executed the kind of surveillance device used must be stated in the report to the Judge or Magistrate.

Inspection 16 June 2015: All reports to a Judge or Magistrate inspected stated the kind of device used.

6.4 – Section 58(2)(b)(ii) If the warrant was executed the period during which the device was used must be stated in the report to the Judge or Magistrate.

Inspection 16 June 2015: Of all reports to a Judge or Magistrate inspected, each stated the period during which the warrant was used.

6.5 - Section 58(2)(b)(iii) If the warrant was executed the name, if known, of any person whose conversations or activities were overheard, listened to, monitored, recorded or observed by the use of the device must be stated in the report to the Judge or Magistrate.

Inspection 16 June 2015: Reports inspected documented the name of the person/s whose activities were monitored in compliance with this section.

6.6 – Section 58(2)(b)(iv) If the warrant was executed the name, if known, of any person whose geographical location was determined by the use of the device must be stated in the report to the Judge or Magistrate.

Inspection 16 June 2015: Of the reports inspected, each documented the name of the person/s whose geographical location was determined in compliance with this section.

6.7 - Section 58(2)(b)(v) If the warrant was executed the details of any place on which the device was installed or used must be stated in the report to the Judge or Magistrate.

Inspection 16 June 2015: All reports inspected stated the details of the place on (or in) which the device was installed or used.

6.8 - Section 58(2)(b)(vi) If the warrant was executed the details of anything on which the device was installed or any place where the thing was located when it was installed must be stated in the report to the Judge or Magistrate.

Inspection 16 June 2015: Of all reports inspected, each stated the details of the thing on which the device was installed or the place where the thing was located when it was installed.

6.9 - Section 58(2)(b)(vii) If the warrant was executed the details of the benefit to the investigation of the use of the device and of the general use made of any evidence or information obtained by the use of the device must be stated in the report to the Judge or Magistrate.

Inspection 16 June 2015: All reports inspected stated the benefit of the investigation and if relevant the general use made of any evidence or information obtained by the use of the device.

6.10 - Section 58(2)(b)(viii) If the warrant was executed the details of the compliance with the conditions to which the warrant was subject must be stated in the report to the Judge or Magistrate.

Inspection 16 June 2015: An examination of the records identified that details of compliance with conditions of warrants issued conditionally were identified within the report to the Judge or Magistrate.

6.11 - Section 58(2)(c)(i) If the warrant was extended or varied the number of extensions or variations must be stated in the report to the Judge or Magistrate.

Inspection 16 June 2015: One extension warrant was applied for during the inspection period and granted for the period of 60 days. The extension warrant was the subject of an appropriate report to the issuing Judge.

6.12 – Section 58(2)(c)(ii) If the warrant was extended or varied the reasons for the extensions or variations must be stated in the report to the Judge or Magistrate.

Inspection 16 June 2015: One extension warrant was applied for during the inspection period and granted for the period of 60 days. Reasons for having sought the extension were provided for in the report to the issuing Judge.

6.13 – Section 58(3)(a) If a retrieval warrant was obtained, the details of any place entered, anything opened and anything removed and replaced under the warrant must be stated in the report to the Judge or Magistrate.

Inspection 16 June 2015: No retrieval warrants were recorded during this reporting period.

6.14 – Section 58(3)(b) If a retrieval warrant was obtained whether the device was retrieved under the warrant must be stated in the report to the Judge or Magistrate.

Inspection 16 June 2015: No retrieval warrants were recorded during this reporting period.

6.15 – Section 58(3)(c) If a retrieval warrant was obtained but the device was not retrieved, the reason why must be stated in the report to the Judge or Magistrate.

Inspection 16 June 2015: No retrieval warrants were recorded during this reporting period.

6.16 – Section 58(3)(d) If a retrieval warrant was obtained, the details of compliance with the conditions (if any) to which the warrant was subject must be stated in the report to the Judge or Magistrate.

Inspection 16 June 2015: No retrieval warrants were recorded during this reporting period.

7. ANNUAL REPORTS.

7.1 – Section 59 The chief officer of a law enforcement agency must give a report to the Minister each financial year with documented information.

Inspection 16 June 2015: At the time of inspection the statutory period ending 30 June 2015 had not expired.

8. KEEPING DOCUMENTS FOR WARRANTS AND EMERGENCY AUTHORISATIONS.

8.1 – Section 60(a) The Chief Officer retained each warrant issued to a law enforcement officer of the agency.

Inspection 16 June 2015: Original warrants and ancillary documentation were inspected, each contained within its own 'warrant file.' The Commissioner of Police has delegated his powers in relation to record keeping under the Act to the Commander, Crime and Specialist Service Command. All original and copied files are held within a secure facility situated in the Technical and Covert Section.

8.2 – Section 60(b) The Chief Officer of the law enforcement agency retained each notice given to the Chief Officer (by a Judge or Magistrate) under section 25(4) of revocation of a warrant.

Inspection 16 June 2015: 8 warrants were revoked during this reporting period with the warrant file in each case containing the notice given by a Judge or Magistrate in compliance with section 25(4).

8.3 – Section 60(c) The Chief Officer retained each emergency authorisation given to a law enforcement officer of the agency.

Inspection 16 June 2015: There were 3 emergency authorisations sought during this reporting period. A copy of the emergency authorisations in each case was sighted during inspection.

8.4 – Section 60(d) The Chief Officer retained each application made by a law enforcement officer of the agency for an emergency authorisation.

Inspection 16 June 2015: 3 applications were made for emergency authorisations and retained.

8.5 – Section 60(e)(i) The Chief Officer retained a copy of each application made by a law enforcement officer of the agency for a warrant.

Inspection 16 June 2015: All files inspected contained original and copied documents of the warrant application and ancillary documentation.

8.6 – Section 60(e)(ii) The Chief Officer retained a copy of each application made for an extension, variation or revocation of a warrant.

Inspection 16 June 2015: All files inspected contained original and copied documents of the warrant applications in compliance with this section.

8.7 – Section 60(e)(iii) The Chief Officer retained a copy of an approval for the exercise of powers under an emergency authorisation.

Inspection 16 June 2015: Copies of the 3 emergency authorisation approvals were held in compliance with this section.

8.8 – Section 60(f) The Chief Officer retained a copy of each report made to a Judge or Magistrate under section 58.

Inspection 16 June 2015: Of the records inspected relating to completed matters, a copy of each report under section 58 was retained.

8.9 – Section 60(g) The Chief Officer retained a copy of each certificate issued by a senior officer of the agency under section 71 (Evidentiary Certificates).

Inspection 16 June 2015: During this reporting period 1 Evidentiary Certificate was issued and a copy retained.

9. OTHER RECORDS TO BE KEPT

9.1 – Section 61(a) The Chief Officer of a law enforcement agency must keep a statement as to whether each application made by a law enforcement officer of the agency for a warrant, or extension, variation or revocation of a warrant, was granted, refused or withdrawn.

Inspection 16 June 2015: NT Police complied with this provision.

9.2 – Section 61(b) The Chief Officer of a law enforcement agency must keep a statement as to whether each application made by a law enforcement officer of the agency for an emergency authorisation, or for approval of powers exercised under an emergency authorisation, was granted, refused or withdrawn.

Inspection 16 June 2015: NT Police complied with this provision.

9.3 – Section 61(c) The Chief Officer of a law enforcement agency must keep details of each use by the agency, or by a law enforcement officer of the agency, of information obtained by the use of a surveillance device by a law enforcement officer of the agency.

Inspection 16 June 2015: NT Police complied with this provision.

9.4 – Section 61(d) The Chief Officer of a law enforcement agency must keep details of each communication by a law enforcement officer of the agency to a person other than a law enforcement officer of the agency, of information obtained by the use of a surveillance device by a law enforcement officer of the agency.

Inspection 16 June 2015: NT Police advise that information gained from 1 surveillance device was provided to Queensland Police.

9.5 – Section 61(e) The Chief Officer of a law enforcement agency must keep details of each occasion when, to the knowledge of a law enforcement officer of the agency, information obtained by the use of a surveillance device by a law enforcement officer of the agency was given in evidence in a relevant proceeding.

Inspection 16 June 2015: NT Police advised no information received from Surveillance Devices was used in any court proceedings during this reporting period.

9.6 – Section 61(f) The Chief Officer of a law enforcement agency must keep details of the destruction of records or reports under Section 55(1) (b).

Inspection 16 June 2015*:* NT Police advised no records have been destroyed since the previous inspection of December 2014.

9.7 – Section 62(1) The Chief Officer of a law enforcement agency must keep a register of warrants and emergency authorisations.

Inspection 16 June 2015: NT Police keep a Register of Warrants and Emergency Authorisations.

9.8 – Section 62(2) The Register must, for each warrant issued, state the date of issue; the name of the Judge/Magistrate who issued it; the name of the LEO primarily responsible for executing it; the offence for which it was issued; the period during which it is in force; details of any extension or variation of it.

Inspection 16 June 2015: NT Police complied with this provision.

9.9 – Section 62(3) The Register must, for each emergency authorisation, state the date it was given; the name of the senior officer who gave it; the name of the law enforcement officer to whom it was given; the offence for which it was given and the date on which the application for approval of powers exercised under it was made.

Inspection 16 June 2015: There were 3 emergency authorisations issued during this reporting period and the register complied with this provision.
