



REPORT TO:

ATTORNEY-GENERAL and MINISTER FOR JUSTICE

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

SECOND REPORT 2016

Date report issued: August 2016

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 2016 there has been one inspection. It took place on 15 June 2016 and covered the period from 11 December 2015 to 15 June 2016.

BACKGROUND

From 1 May 2016, the title of judicial officers in the Local Court changed from 'Magistrate' to 'Judge of the Local Court' and certain consequential amendments were made to the Act. While this report covers a time period before and after that change, the report adopts the new terminology for ease of reference and, unless it is material for the purposes of the report, merely refers to Judge or Judges.

It is, however, important to bear in mind that the powers of Supreme Court Judges and Local Court Judges under the Act continue to differ in certain essential respects.

NT Police Procedures-Surveillance Devices was promulgated on 4 August 2011. The document sets out procedures regarding the application process for warrants, responsibilities of the Registrar, record keeping and warrant administration requirements.

The Technical and Covert Section has 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 15 June 2016. The Register documented 15 warrants for the relevant period. The Register recorded 3 emergency authorisations had been sought since the previous inspection of 10 December 2015.

The Register fulfilled the requirements of section 62.

INSPECTION

Records inspected included documentation relating to 15 warrant applications since the last inspection. Of the 15 warrant applications;

- 2 authorised the use of a listening/optical device
- 10 authorised the use of a tracking device
- 1 authorised the use of a listening/tracking device
- 1 authorised the use of a tracking/optical device
- 1 authorised the use of a tracking/data device.

In addition;

- 4 applications were initiated but did not progress to consideration by a Judge.

Emergency authorisations were issued for:

- 1 listening/optical device
- 2 tracking devices.

DEFICIENCIES

Emergency authorisations

On inspection, an error was brought to the attention of my staff. A senior Police officer may grant an emergency authorisation for a surveillance device (section 35). However, when an emergency authorisation is granted, an application for approval of the emergency use must be submitted to a Supreme Court Judge within 2 days (section 37(1)). The Supreme Court Judge may approve the exercise of power under an emergency authorisation (section 39(2)) and may issue a surveillance device warrant (section 39(3)).

Two related applications for approval of an emergency authorisation and issue of a warrant were made to a Magistrate rather than a Judge. In each case, the Magistrate proceeded to issue a surveillance device warrant.

It should be noted that the emergency authorisations and warrants related to tracking devices and that a Magistrate had authority to issue a warrant for a tracking device (section 18(2)). This may have contributed to the incorrect belief that a Magistrate could approve an emergency authorisation and issue a subsequent warrant in relation to a tracking device.

A period of one month passed before the error was noticed by the Technical and Covert Section. It was then determined to revoke the instruments, retrieve the devices and re-apply for new warrants. NT Police advise that no information was received from the tracking devices which would provide any benefit to the NT Police.

The Act provides important restrictions on the use of surveillance devices to protect the privacy of all Territorians. It allows for exceptions that are justified for law enforcement purposes. However, those exceptions come with relatively onerous procedural requirements.

It is essential that those requirements are scrupulously complied with by NT Police to ensure that the broad objects of the Act are achieved and that information obtained can be used for law enforcement purposes. This requires that all officers involved in the implementation of the Act and the use of surveillance devices are adequately trained and equipped to meet their obligations under the Act.

Given the errors described above, the recent change in terminology and the differing roles of Supreme Court Judges and Local Court Judges under the Act, it is important for all police officers to take even greater care in ensuring that applications and reports are made to the appropriate judicial officer.

I recommend that NT Police take steps to strengthen education and training of relevant officers in the requirements and implementation of the Act.

Retention of protected information

Section 55(1) of the Act provides:

The chief officer of a law enforcement agency must ensure:

(a) a record or report obtained by the use of a surveillance device by a law enforcement officer of the agency under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation is kept in a secure place that is not accessible to people who are not entitled to deal with the record or report; and

(b) a record or report mentioned in paragraph (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).

My Office routinely reports on whether records have been destroyed in compliance with paragraph (b).


It is acknowledged that some records of this type may need to be retained for extended periods. However, it is important in terms of ensuring and monitoring compliance with section 55(1)(b) that NT Police have a systematic review process in place.

I recommend that:

- **the ongoing need for retention of every record or report of a type described in section 55(1)(a), whenever created, be reviewed by NT Police regularly (and at least annually); and**
- **at each inspection by my Office, NT Police provide a certificate confirming the date of finalisation of the most recent review of those records.**

FINDING

Subject to the points discussed above, 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
August 2016

**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 15 June 2016: Original warrants inspected recorded the name of the applicant in compliance with this section.

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

Inspection 15 June 2016: 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 15 June 2016: Original warrants inspected recorded the date the warrant was issued in compliance with this section.

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

Inspection 15 June 2016: 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 place where the warrant is to be used.

Inspection 15 June 2016: 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 15 June 2016: 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 15 June 2016: 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 15 June 2016: 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 primarily responsible for executing the warrant.

Inspection 15 June 2016: 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 any conditions subject to which a place may be entered, or a surveillance device may be used.

Inspection 15 June 2016: Original warrants inspected recorded any 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 the Judge under section 58.

Inspection 15 June 2016: Original warrants inspected recorded the time within which the report is to be made to a Judge in compliance with this section.

1.12 - Section 22(2) Warrant is signed by the issuing Judge and includes the name of the Judge.

Inspection 15 June 2016: Original warrants inspected were signed by a Judge in compliance with this section and included the name of the Judge.

2. EXTENSION, VARIATION AND REVOCATION OF WARRANTS

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

Inspection 15 June 2016: There were no applications for extensions to warrants during this inspection.

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

Inspection 15 June 2016: 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 of surveillance device warrants.

Inspection 15 June 2016: 7 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 15 June 2016: 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 15 June 2016: 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 15 June 2016: 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 15 June 2016: There were no applications for retrieval warrants recorded during this inspection period.

3.5 - Section 30(1)(b)(v) Retrieval warrants records the period during which it is was in force (which must not exceed 90 days)

Inspection 15 June 2016: 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 15 June 2016: There were no applications for retrieval warrants recorded during this inspection period.

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

Inspection 15 June 2016: There were no applications for retrieval warrants recorded during this inspection period.

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

Inspection 15 June 2016: There were no applications for retrieval warrants recorded during this inspection period.

3.9 - Section 30(2) Retrieval warrant signed by the issuing Judge and includes the name of the Judge.

Inspection 15 June 2016: There were no applications for retrieval warrants recorded during this inspection period.

4. EMERGENCY AUTHORISATIONS

4.1 - Section 34 – 35 Application and Emergency Authorisation.

Inspection 15 June 2016: Records of the application to the senior officer and the authorisation in each of the 3 cases were sighted and met the requirements of sections 34 to 35.

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

Inspection 15 June 2016: 3 Emergency Authorisations were granted during the reporting period. One was submitted to a Supreme Court Judge within two days in compliance with section 37(1). In two related cases, the application for approval was submitted within 2 days but to a Magistrate. This error is discussed in the 'Deficiencies' section of the report.

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 15 June 2016: 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 15 June 2016: No records have been destroyed since the last inspection of 10 December 2015.

6. REPORTING AND RECORD-KEEPING

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

Inspection 15 June 2016: Of the 15 warrants the subject of report for this inspection period, records indicated:

- 8 warrants - a report to the Judge had been provided.
- 6 warrants - current and therefore do not fall within the ambit of this section.
- 1 warrant – a report was submitted one week late.

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

Inspection 15 June 2016: All reports to the issuing Judge 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.

Inspection 15 June 2016: All reports 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.

Inspection 15 June 2016: Of all reports 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.

Inspection 15 June 2016: 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.

Inspection 15 June 2016: 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.

Inspection 15 June 2016: 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.

Inspection 15 June 2016: All reports inspected 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.

Inspection 15 June 2016: 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 (if any) to which the warrant was subject must be stated in the report.

Inspection 15 June 2016: Details of compliance with conditions of warrants issued conditionally were identified in the report.

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.

Inspection 15 June 2016: No extensions or variations were recorded during this inspection period.

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.

Inspection 15 June 2016: No extensions or variations were recorded during this inspection period.

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.

Inspection 15 June 2016: 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.

Inspection 15 June 2016: 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.

Inspection 15 June 2016: 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.

Inspection 15 June 2016: 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 15 June 2016: At the time of the inspection the statutory period ending 30 June 2016 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 15 June 2016: 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) under section 25(4) of revocation of a warrant.

Inspection 15 June 2016: 7 warrants were revoked during this reporting period with the warrant file in each case containing the notice given by a Judge 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 15 June 2016: 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 15 June 2016: 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 15 June 2016: 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 15 June 2016: Files inspected contained relevant original and copied documents 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 15 June 2016: Copies of the 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 under section 58.

Inspection 15 June 2016: 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 15 June 2016: During this reporting period 5 Evidentiary Certificates were issued and copies 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 15 June 2016: 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 15 June 2016: 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 15 June 2016: 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 15 June 2016: NT Police advised that no communication occurred.

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 15 June 2016: NT Police advised information received from 5 Surveillance Devices was used in 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 15 June 2016: NT Police advised no records have been destroyed since the previous inspection of December 2015.

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

Inspection 15 June 2016: 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 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 15 June 2016: 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 15 June 2016: NT Police complied with this provision.
