



REPORT TO:

ATTORNEY-GENERAL and MINISTER FOR JUSTICE

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

DECEMBER 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 August 2016 there has been one inspection. It took place on 6 December 2016 and covered the period from 16 June 2016 to 5 December 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. 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 6 December 2016. The Register documented 25 warrants for the relevant period.

The Register fulfilled the requirements of section 62.

INSPECTION

Records inspected included documentation relating to 25 warrant applications since the last inspection. Of the 25 warrant applications:

- 8 authorised the use of a listening/optical device
- 9 authorised the use of a tracking device
- 5 authorised the use of a listening/tracking device
- 1 authorised the use of a tracking/optical/listening device
- 2 authorised the use of a listening device.

In addition:

- 1 application was initiated but did not progress to consideration by a Judge.

DEFICIENCIES

On inspection, an error was brought to the attention of my staff. The error related to two warrants which were submitted to, and approved by, a Judge. When the warrants were received at the Technical and Covert Section, words were found to have been used inconsistently in relation to '*the name of a place*' and '*the use of a thing*' when describing where and/or how the device would be used. The warrants were revoked, corrected and re-issued.

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

December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 2016: There was 1 application for an extension to a warrant examined during this inspection.

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

Inspection 6 December 2016: There was 1 application for a variation of the terms of a warrant examined during the inspection of records.

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

Inspection 6 December 2016: 9 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 2016: There were no applications for Emergency Authorisations recorded during this inspection period.

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 6 December 2016: There were no applications for Emergency Authorisations recorded during this inspection period.

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 6 December 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 6 December 2016: No records have been destroyed since the last inspection of 15 June 2016. However, a current destruction notice is with the Commissioner awaiting his authority.

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 6 December 2016: Of the 25 warrants the subject of report for this inspection period, records indicated:

- 14 warrants - a report to the Judge had been provided.
- 11 warrants - current and therefore do not fall within the ambit of this section.

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

Inspection 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 2016: The application for a variation and extension as recorded in 2.1 and 2.2 were for the same warrant. The relevant warrant is current and the report to the Judge is not yet due.

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 6 December 2016: The application for a variation and extension as recorded in 2.1 and 2.2 were for the same warrant. The relevant warrant is current and the report to the Judge is not yet due.

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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 2016: Northern Territory Police complied with the requirements of this section.

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 6 December 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 6 December 2016: 9 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 6 December 2016: There were no applications for Emergency Authorisations recorded during this inspection period.

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 6 December 2016: There were no applications for Emergency Authorisations recorded during this inspection period.

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 6 December 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 6 December 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 6 December 2016: There were no applications for Emergency Authorisations recorded during this inspection period.

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

Inspection 6 December 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 6 December 2016: During this reporting period no Evidentiary Certificates were issued.

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 6 December 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 6 December 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 6 December 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 6 December 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 6 December 2016: NT Police advised no information received from 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 6 December 2016: NT Police advised no records have been destroyed since the previous inspection of June 2016.

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

Inspection 6 December 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 6 December 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 6 December 2016: There were no applications for Emergency Authorisations recorded during this inspection period.
