



REPORT TO:

ATTORNEY-GENERAL and MINISTER FOR JUSTICE

COMPLIANCE BY NORTHERN TERRITORY POLICE
FORCE WITH *SURVEILLANCE DEVICES ACT 2007*

JULY 2020

INTRODUCTION

The purposes of the *Surveillance Devices Act 2007* (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 and ICAC 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 Supreme Court Judges, Local Court Judges 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 2020 there has been one inspection. It took place on 16 June 2020 and covered the period from 17 December 2019 to 15 June 2020.

BACKGROUND

NT Police Procedures-Surveillance Devices sets out procedures regarding the application process for warrants, responsibilities of the Registrar, record keeping and warrant administration requirements.

Technical and Covert Operations 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.

INSPECTION

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 2020.

During the period since the last inspection, 28 applications/authorisations were allocated warrant numbers:

Warrant	24
Emergency authorisation	3
Extension	0
Variation	1
Retrieval	0

Two applications were allocated with a warrant number but did not proceed further.

Applications/authorisations that did proceed comprised:

- 8 relating to use of a listening/optical device
- 8 relating to use of a tracking device
- 4 relating to use of a listening/tracking device
- 1 relating to use of a listening/optical/tracking device
- 3 relating to the use of an listening device
- 1 relating to data surveillance device
- 1 relating to the use of a listening/optical/data device

In addition, 1 warrant revocation was recorded.

NT Police records were inspected to ensure compliance with all statutory requirements.

ISSUES

In one case, an emergency authorisation was given by a senior officer under section 35 of the Act.

Where an emergency authorisation is given, an application must be made to a Supreme Court Judge within two days for approval of the exercise of powers (section 37 of the Act). NT Police advise that the application was not approved because there were insufficient grounds in the affidavit provided to support the emergency use of powers. They advise that no material captured during the emergency use has been made available to investigators.

They note that a warrant was subsequently sought and issued by the Judge in relation to the matter. They further advise that a series of administrative errors contributed to the outcome and that steps have been implemented to prevent any reoccurrence, including a reminder to all staff regarding policy and process relating to emergency applications.

FINDING

On the basis of the records inspected, other than the issues discussed above, NT Police and its law enforcement officers have complied with the requirements of the Act.



Peter Shoyer
Ombudsman
July 2020

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

1. SURVEILLANCE DEVICE WARRANTS

Warrants were inspected to ensure compliance with each of the provisions listed below. No issues were identified.

- 1.1 - Section 22(1)(b)(i) Warrant records the name of applicant on warrant.
- 1.2 - Section 22(1)(b)(ii) Warrant records the alleged offence for which a warrant was issued.
- 1.3 - Section 22(1)(b)(iii) Warrant records the date the warrant was issued.
- 1.4 - Section 22(1)(b)(iv) Warrant records the kind of surveillance device authorised for use.
- 1.5 - Section 22(1)(b)(v) Warrant records the place where the warrant is to be used.
- 1.6 - Section 22(1)(b)(vi) Warrant to record the use of a surveillance device on a thing or class of thing.
- 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.
- 1.8 - Section 22(1)(b)(viii) Warrant records the period during which it was in force (which must not exceed 90 days).
- 1.9 - Section 22(1)(b)(ix) Warrant records the name of the law enforcement officer primarily responsible for executing the warrant.
- 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.
- 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.
- 1.12 - Section 22(2) Warrant is signed by the issuing Judge and includes 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.

There was no application for an extension during this period.

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

One application for variation of the terms of a warrant was made during this period. No issues were identified.

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

One warrant was revoked during this inspection period. In this case, the revocation was carried out prior to the expiry date of the warrant with the revocation instrument sighted during the inspection.

3. RETRIEVAL WARRANTS

No applications for a retrieval warrant were recorded.

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

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

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

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

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

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

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

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.

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

4. EMERGENCY AUTHORISATIONS

4.1 - Section 34 – 35 Application and Emergency Authorisation.

Three applications for emergency authorisations were recorded. See above discussion in Issues. No other issues were identified.

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.

Two emergency authorisations were approved by a Supreme Court Judge. See above discussion in Issues regarding the third.

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.

Surveillance devices documentation is secured within the Peter McAulay Centre, Berrimah, under the security of the Technical and Covert Operations 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).

No records have been destroyed since the last inspection.

6. REPORTING AND RECORD-KEEPING

Records were inspected to ensure compliance with each of the provisions listed below. In some cases, the time for reporting had not yet expired.

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.

Two of the warrant files inspected showed officers had not submitted the report to the Judge in the allocated timeframe. This was due to errors on the part of the officers. The requirements were brought to their attention.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

At the time of the inspection, the statutory period ending 30 June 2020 had not expired.

8. KEEPING DOCUMENTS FOR WARRANTS AND EMERGENCY AUTHORISATIONS

NT Police records were inspected to ensure compliance with each of the provisions listed below. No issues were identified.

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

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.

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

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

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.

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.

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

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

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).

Three Evidentiary Certificates were issued and copies retained.

9. OTHER RECORDS TO BE KEPT

NT Police records were inspected to ensure compliance with each of the provisions listed below. No issues were identified.

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.

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.

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.

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.

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.

NT Police advised information gleaned from Surveillance Devices is being used in 3 matters currently before the courts.

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).

NT Police advised no records have been destroyed since the previous inspection.

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

NT Police keep a Register of Warrants and Emergency Authorisations. NT Police complied with the following provisions in relation to the Register.

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.

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.
