

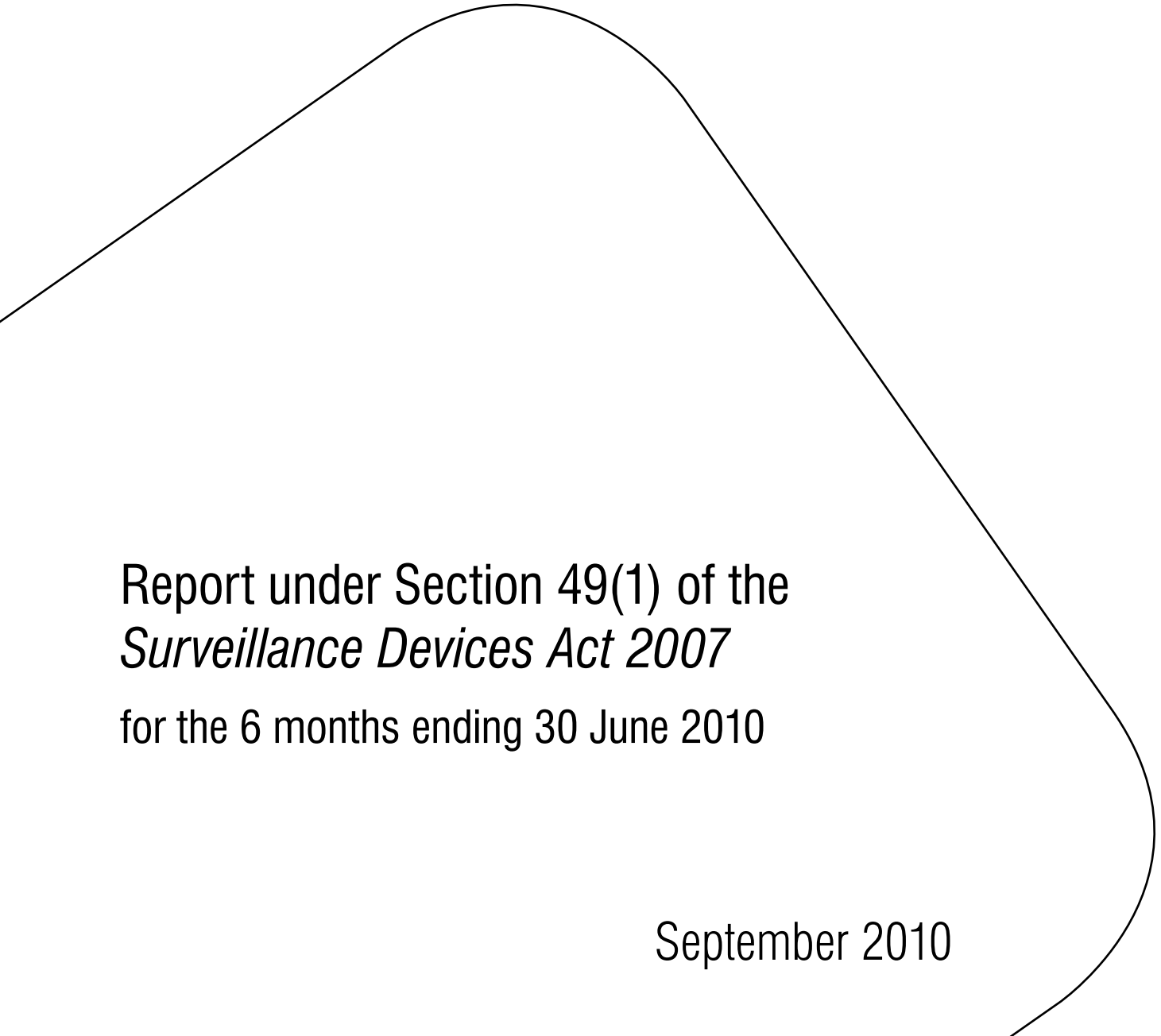


NSW Ombudsman

Report under Section 49(1) of the
Surveillance Devices Act 2007

for the 6 months ending 30 June 2010

September 2010



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NSW Ombudsman

Our logo has two visual graphic elements; the 'blurry square' and the 'magnifying glass' which represents our objectives. As we look at the facts with a magnifying glass, the blurry square becomes sharply defined, and a new colour of clarity is created.

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NSW Ombudsman

30 September 2010

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The Honourable John Hatzistergos MLC
NSW Attorney-General
Level 33, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Attorney-General

Report under section 49(1) of the *Surveillance Devices Act 2007* for the six months ending 30 June 2010

The *Surveillance Devices Act 2007* requires the Ombudsman to inspect the records of each law enforcement agency authorised to use surveillance devices to determine the extent of compliance with the Act by the agency and the law enforcement officers of the agency.

The Act also requires me to report to you at six monthly intervals on the results of these inspections.

I am pleased to present you with a report under section 49(1) of the *Surveillance Devices Act 2007* which covers our inspection of records relating to surveillance devices for the six months up to 30 June 2010.

Pursuant to section 49(2) of the Act, you are required to lay the report (or cause it to be laid) before both Houses of Parliament within 15 days.

Once tabled, it is my intention to publish the report on the Ombudsman's website www.ombo.nsw.gov.au

I would therefore appreciate your earliest advice as to the tabling of the report.

Yours sincerely

Bruce Barbour
Ombudsman

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Introduction

The *Surveillance Devices Act 2007 (NSW)* (SD Act) began operation on 1 August 2008 and allows for the use of surveillance devices to investigate crime and to enable evidence to be obtained of the commission of such crime or the identity or location of the offender(s). The SD Act covers the installation, use and maintenance of listening, optical, tracking, and data surveillance devices and restricts the communication and publication of private conversations, surveillance activities, and information obtained from their use.

The Act also establishes an accountability regime. Reporting and record keeping obligations are imposed on the law enforcement agencies eligible to use surveillance devices as are provisions for the safe keeping and destruction of information obtained from the use of surveillance devices.

The Act also requires the NSW Ombudsman to conduct inspections of the surveillance device records of law enforcement agencies to determine the extent of compliance by law enforcement agencies and law enforcement officers with the Act.

Four law enforcement agencies¹ are currently the subject of these inspections:

- NSW Police Force
- NSW Crime Commission
- The Police Integrity Commission
- The Independent Commission Against Corruption

The Ombudsman is required by sections 49(1) of the Act to report to the Minister at 6-monthly intervals on the result of inspections. The Minister is required by section 49(2) to lay the report or cause the report to be laid before both Houses of Parliament within 15 days after receiving the report.

This report is for the period 1 January 2010 until 30 June 2010.

Scope of the inspection

The aim of the legislation is to enable law enforcement agencies to utilise surveillance devices to assist in the successful investigation and prosecution of certain offences. Such use is, of course, subject to meeting certain procedural and record keeping requirements. The inspection and monitoring by the Ombudsman aims to foster agency compliance with the Act and to provide public accountability through regular reporting to the Minister and Parliament. The approach taken in the inspections conducted by the Ombudsman is to examine the records of each agency for compliance with the record and document keeping requirements while at the same time considering such other aspects of compliance as it is possible to determine from those records and from questions asked of relevant law enforcement officers.

There are three main areas of compliance that are the focus of the inspection process carried out under the Act. Part 3 of the Act deals with warrants and emergency authorisations and Part 5 of the Act deals with compliance and monitoring and includes dealing with records obtained by use of surveillance devices, the use, communication or publication of protected information and reporting and record keeping. Part 6 requires the particulars of warrants sought under Part 3 to be notified to the Attorney-General and requires the person to whom a warrant was issued to inform the subject of the surveillance if directed by the eligible Judge.

Surveillance device warrants are issued by eligible Judges of the Supreme Court or eligible Magistrates in the case of a surveillance device warrant that authorises the use of a tracking device only or a retrieval warrant in respect of a tracking device. The Act requires that applications must include certain information and generally must be accompanied by an affidavit setting out the grounds on which the warrant is sought. While the inspection of the records includes an examination of the matters required to be specified it does not examine the sufficiency or otherwise of the information in support of the application. That is a matter for the relevant judicial officer to determine.

The Ombudsman inspects each individual surveillance device warrant file at each agency. The inspection involves an examination of the application, warrant, notice to the Attorney-General and the report to the issuing judicial officer and the Attorney-General, and any other information contained on the file.

¹ The Act also empowers the use of surveillance devices by the Australian Crime Commission but the inspection and reporting of that agency's use of surveillance devices is carried out by the Commonwealth Ombudsman.

The inspection involves checking that:

- the application is made to an eligible Judge or in the case of an application for a surveillance device authorising the use of a tracking device only, an eligible Magistrate
- the application includes the name of the applicant and the nature and duration of the warrant including the kind of device sought and is supported by an affidavit
- the warrant contains the information required by s.20
- any extension or variation to the warrant complies with s.22
- the revocation of a warrant complies with s.23
- the law enforcement officer to whom the warrant is issued or who is primarily responsible for executing the warrant and is satisfied the use of the warrant is no longer necessary informs the chief officer immediately and that the chief officer when informed that the use of the device is no longer necessary takes steps to discontinue the use of the device or devices as soon as practicable
- where a warrant has been revoked the use of the device is discontinued immediately
- the s.51 notice contains the required information and has been provided to the Attorney-General before the warrant has been issued and that the Attorney-General has been given an opportunity to be heard on the application if so desired
- the report under s.44 has been provided to the eligible judge and the Attorney-General within the time specified in the warrant
- the report complies with the requirements of s.41
- the application for continued use of an authorised surveillance device in an emergency situation complies with s.31 and 32
- within 2 business days an application for approval after the use of a surveillance device without a warrant is made to an eligible judge and that such approval complies with s.33
- the register of warrants and emergency applications contains the information required by s.47
- that any directions under s.52 have been complied with.

The inspection also includes examining records relating to the use of protected information obtained by the use of surveillance devices and the security of those records at various locations.

Inspection overview

During the period 1 January 2010 to 30 June 2010 a total of 460 surveillance device warrants were granted across the four NSW law enforcement agencies. Consolidated historical data on surveillance device warrants is contained in Appendix 1.

Figure 1: Surveillance device warrants issued – 1 January 2010 to 30 June 2010

Agency	Number
NSW Police Force	289
NSW Crime Commission	166
Independent Commission Against Corruption	3
Police Integrity Commission	2
Total	460

Figure 2: Surveillance device warrants reports² – 1 January 2010 to 30 June 2010

Agency	Number
NSW Police Force	174
NSW Crime Commission	28
Independent Commission Against Corruption	4
Police Integrity Commission	0
Total	206

Figure 3: Surveillance device warrants revoked – 1 January 2010 to 30 June 2010

Agency	Number
NSW Police Force	51
NSW Crime Commission	10
Independent Commission Against Corruption	2
Police Integrity Commission	1
Total	64

Figure 4: Emergency use of surveillance devices – 1 January 2010 to 30 June 2010

Agency	Number
NSW Police Force	0
NSW Crime Commission	3
Independent Commission Against Corruption	0
Police Integrity Commission	0
Total	3

² Reports received by the Attorney-General within the relevant year.

NSW Police Force

During the reporting period 397 surveillance device files were inspected, 289 warrants were issued, one of which was a retrieval warrant. No emergency authorisations were granted and 106 applications were cancelled, no longer required or were still being processed at 30 June 2010.

We were satisfied that the NSW Police Force had generally complied with its obligations under the Act. The exceptions are detailed below.

Compliance with obligations relating to the keeping of documents connected with warrants and emergency authorisations

Warrants

Section 17 Applications for a surveillance device warrant

All applications were made to eligible Judges. No applications were made to eligible Magistrates in the case of applications for a surveillance device authorising the use of a tracking device only.

Section 18 Remote application

There were seven remote applications made.

All applications were notified to the Attorney-General and affidavits were provided to the issuing judicial officer within the legislative time frame.

Section 22 Extension and variation of surveillance device warrant

Ten warrants were varied or extended during the reporting period.

Section 23 Revocation of surveillance device warrant

There were 51 revocations during the reporting period.

Section 24 Discontinuance of use of surveillance device under warrant

Section 24(2)(a) requires that a surveillance device which is no longer necessary for the purpose of enabling evidence to be obtained is discontinued as soon as practicable. NSW Police Force utilise a Notification of Discontinuation form to record such action. Section 24(2)(b) further requires that following a discontinuation an application be made for the revocation of the warrant under section 23.

While the Act requires that a surveillance device be discontinued as soon as practicable after the chief officer of the law enforcement agency is satisfied that the use of the device is no longer necessary, there is no time limit required for the making of an application for revocation of the warrant. As a matter of administrative practicality, I have taken the view that where a warrant expires within five days of the formal discontinuance of the use of a surveillance device, I will not consider the failure to make application for a revocation to be unreasonable.

In all cases inspected where there was a revocation, there was a notice of discontinuance of the use of the surveillance device on file.

Section 25 Application for retrieval warrant

One application was made for a retrieval warrant and the warrant was granted.

Section 26 Remote application

No remote applications were made for retrieval warrants.

Section 30 Revocation of retrieval warrant

No retrieval warrants were revoked.

Emergency authorisations

Section 31 Emergency use of surveillance devices – threat of serious personal violence or substantial property damage

There was no emergency use of surveillance device warrants.

Section 32 Emergency authorisation – continued use of surveillance devices in participating jurisdiction

There was no emergency use of surveillance device warrants in participating jurisdictions.

Section 33 Application for approval after use of surveillance device without warrant or under emergency authorisation

There was no emergency use of surveillance device warrants.

Compliance and monitoring

Section 40 Prohibition on use, communication or publication of protected information

During this reporting period additional inspections were carried out at Dubbo, Wagga Wagga, Broken Hill and Dareton Police Stations and at the Terrorism Investigation Squad premises. Staff at these locations used the Protected Information Registers and protected information was securely stored. Where protected information was obtained under controlled operations by law enforcement participants operating under assumed names this information was also recorded and stored securely.

Section 41 Dealing with records obtained by use of surveillance devices

NSW Police Force personnel use the protected information registers to record any dealing with protected information. Certain staff within each LAC are tasked with inspecting these records in addition to our inspections. The registers were kept in accordance with the Act during our inspections at the above locations.

Section 44 Reports to eligible Judge or eligible Magistrate and Attorney-General

Section 44 of the *Surveillance Devices Act 2007* requires a report to be furnished to the eligible Judge, or eligible Magistrate, as the case may be, and to the Attorney-General. Apart from the warrant files mentioned below, there were copies of the relevant reports required on all files.

The following warrant files contained no reports to the eligible Judge and the Attorney-General within a specified number of days following the expiry of the warrant as required.

The issue of Section 44 Reports continues to be problematic. It appeared that these reports were received from the law enforcement officers responsible for the warrant but not provided to the eligible Judge or to the Attorney-General or both within the time specified in the warrant.

Warrant number	Issued	Expiry	Report to EJ	Notice to AG	EJ	AG
SD10/0013	19 Jan 10	18 Feb 10	29 Apr 10	27 Apr 10	70 days	68 days
SD10/0028	15 Jan 10	24 Jan 10	29 Apr 10	23 Mar 10	95 days	58 days
SD10/0115	08 Mar 10	08 Apr 10	24 Jun 10	11 May 10	77 days	33 days
SD10/0129	11 Mar 10	09 Apr 10	24 Jun 10	03 Jun 10	76 days	55 days

The following reports were provided to the Attorney-General within the time specified in the warrant. However there were no details as to when the reports were provided to the eligible Judge.

Warrant number	Issued	Expiry	Revoked	Report to EJ	Report to AG
SD10/0078	17 May 10	15 Aug 10	05 Jul 10		01 Jul 10
SD10/0119	15 Mar 10	13 Jul 10			12 Jul 10
SD10/0137	23 Mar 10	20 Jun 10			29 Jun 10
SD10/0163	30 Apr 10	29 Jun 10			13 Jul 10
SD10/0164	31 Mar 10	28 Jun 10			04 Jul 10
SD10/0165	31 Mar 10	29 Apr 10			28 Jun 10
SD10/0213	17 May 10	01 Jul 10			13 Jul 10
SD10/0237	27 May 10	27 Jul 10	12 Jul 10		12 Jul 10
SD10/0242	09 Jun 10	01 Jul 10			12 Jul 10
SD10/0247	24 May 10	21 Aug 10	05 Jul 10		01 Jul 10
SD10/0258	20 May 10	10 Jun 10			12 Jul 10
SD10/0259	21 May 10	05 Jul 10	02 Jul 10		26 Jul 10
SD10/0271	03 Jun 10	01 Sep 10			01 Jul 10
SD10/0277	04 Jun 10	02 Sep 10	26 Jul 10		26 Jul 10
SD10/0281	04 Jun 10	11 Jul 10			27 Jul 10
SD10/0284	09 Jun 10	24 Jul 10			29 Jun 10
SD10/0289	10 Jun 10	10 Jul 10			27 Jul 10
SD10/0293	16 Jun 10	14 Sep 10	26 Jul 10		26 Jul 10
SD10/0328	30 Jun 10	30 Jul 10			14 Jul 10

At the time of the inspection of 6 August 2010 the following files did not contain s.44 reports. These reports were required within 60 days of expiry, which was the time specified in each of the warrants.

Warrant number	Issued	Expiry	Revoked
SD10/0002	04 Jan 10	04 Feb 10	
SD10/0004	06 Jan 10	05 Apr 10	
SD10/0005	06 Jan 10	05 Apr 10	
SD10/0010	08 Jan 10	15 Jan 10	
SD10/0014	12 Jan 10	13 Mar 10	
SD10/0016	12 Jan 10	11 Apr 10	
SD10/0021	01 Feb 10	02 Apr 10	
SD10/0024	19 Jan 10	03 Feb 10	
SD10/0027	15 Jan 10	14 Apr 10	
SD10/0032	22 Jan 10	21 Apr 10	
SD10/0036	22 Feb 10	11 Mar 10	
SD10/0042	26 Jan 10	24 Feb 10	
SD10/0047	01 Feb 10	01 May 10	

Warrant number	Issued	Expiry	Revoked
SD10/0049	29 Jan 10	28 Feb 10	
SD10/0052	09 Feb 10	11 Mar 10	
SD10/0055	15 Feb 10	15 May 10	
SD10/0056	12 Feb 10	12 Mar 10	
SD10/0059	04 Feb 10	04 May 10	
SD10/0066	15 Feb 10	01 Apr 10	
SD10/0072	12 Feb 10	12 May 10	
SD10/0074	11 Feb 10	11 May 10	
SD10/0079	15 Feb 10	01 Apr 10	
SD10/0081	22 Feb 10	22 May 10	
SD10/0083	17 Feb 10	17 May 10	
SD10/0084	17 Feb 10	18 Apr 10	
SD10/0086	18 Feb 10	20 Mar 10	
SD10/0091	24 Feb 10	23 May 10	
SD10/0092	19 Feb 10	05 Mar 10	
SD10/0096	26 Feb 10	06 Apr 10	
SD10/0097	03 Mar 10	02 Apr 10	
SD10/0099	24 Feb 10	24 Mar 10	
SD10/0101	25 Feb 10	25 Apr 10	02 Mar 10
SD10/0104	01 Mar 10	29 May 10	
SD10/0105	25 Feb 10	25 Apr 10	
SD10/0106	26 Feb 10	26 May 10	
SD10/0108	01 Mar 10	31 Mar 10	
SD10/0110	27 Feb 10	28 Mar 10	
SD10/0117	26 Mar 10	24 May 10	
SD10/0118	08 Mar 10	06 May 10	
SD10/0124	11 Mar 10	09 May 10	
SD10/0131	16 Mar 10	29 Apr 10	
SD10/0135	31 Mar 10	30 May 10	
SD10/0141	30 Mar 10	28 May 10	
SD10/0142	16 Mar 10	14 May 10	
SD10/0146	19 Mar 10	17 Apr 10	
SD10/0151	20 Mar 10	04 Apr 10	
SD10/0154	14 Apr 10	14 May 10	
SD10/0156	31 Mar 10	29 May 10	
SD10/0157	31 Mar 10	29 May 10	
SD10/0158	26 Mar 10	24 Apr 10	
SD10/0168	01 Apr 10	15 May 10	
SD10/0208	27 Apr 10	07 May 10	
SD10/0212	29 Apr 10	09 May 10	

Section 47 Register of warrants and Emergency authorisations

The Act requires the chief officer of the law enforcement agency to keep a register of warrants and emergency authorisations. The register is required to specify certain particulars. The register contained the required particulars.

Evidentiary certificates

Section 50 Provision for the issue of Evidentiary certificates

No evidentiary certificates were issued during this reporting period.

Notifications to the Attorney-General

Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney-General

Section 51 notifications were provided in relation to all warrant applications.

Section 52 Requirement to inform subject of surveillance

No orders were made requiring the subject of the surveillance to be informed.

Concluding comments

For the reporting period, the NSW Police Force was substantially compliant with the Surveillance Devices Act with the exception of the reporting requirements where the NSW Police Force was non-compliant.

Recommendation

The Special Applications Section of Prosecutions Process Branch has formulated a new procedure in dealing with s.44 reports.

- Section 44 template and LEO instructions will be emailed to each OIC when the warrant is obtained.
- The surveillance device database will send automatic reminders to each law enforcement officer responsible for the warrant of their obligation to comply with Section 44 requirements.
- Where there is wilful or deliberate failure by the officer to submit the report, a written notification of the non-compliance to their complaints management team in their command will be considered.

NSWPF/6. *We recommend that the above procedure in dealing with section 44 reports is implemented as soon as practicable.*

NSW Crime Commission

During the reporting period 168 surveillance device files were inspected, 166 warrants were issued during this period one of which was a retrieval warrant and no applications were refused and two applications were not proceeded with due to limitations placed on the use of the devices by the eligible Judge. There were also three applications for emergency use of devices and all three were approved.

We were satisfied that the NSW Crime Commission had generally complied with its obligations under the Act.

Compliance with obligations relating to the keeping of documents connected with warrants and emergency authorisations

Warrants

Section 17 Applications for a surveillance device warrant

All 168 applications were made to eligible Judges. No applications were made to eligible Magistrates in the case of applications for a surveillance device authorising the use of a tracking device only.

Section 18 Remote application

There were no remote applications made.

Section 22 Extension and variation of surveillance device warrant

33 warrants were varied or extended.

Section 23 Revocation of surveillance device warrant

There were 10 revocations during the reporting period.

Section 24 Discontinuance of use of surveillance device under warrant

Section 24 of the *Surveillance Devices Act 2008* (the Act) requires the use of a surveillance device to be discontinued as soon as practicable after the chief officer of the law enforcement agency is satisfied that the use of the device is no longer necessary.

All warrants which had been used were discontinued in a timely manner. Some warrants were never used and were subsequently revoked.

Section 25 Application for retrieval warrant

One application was made for a retrieval warrant.

Section 26 Remote application

No remote applications were made for retrieval warrants.

Section 30 Revocation of retrieval warrant

No retrieval warrants were revoked.

Emergency authorisations

Section 31 Emergency use of surveillance devices – threat of serious personal violence or substantial property damage

There were three applications for the emergency use of surveillance devices and all three were approved.

Section 32 Emergency authorisation – continued use of surveillance devices in participating jurisdiction

There was no emergency use of surveillance device warrants in participating jurisdictions.

Section 33 Application for approval after use of surveillance device without warrant or under emergency authorisation

Three applications were made and subsequently approved.

Compliance and monitoring

Section 40 Prohibition on use, communication or publication of protected information

While protected information was obtained through the use of surveillance devices, the information may be used in the future and the records of each use, communication and publication will be inspected in the future.

Section 41 Dealing with records obtained by use of surveillance devices

The Commission has established guidelines for dealing with protected information. Protected information is stored in the Commission premises with those officers authorised to deal with it.

There were no destructions carried out of protected information at the time of these inspections.

Section 44 Reports to eligible Judge or eligible Magistrate and Attorney-General

All reports were provided to the eligible Judge and Attorney-General within the time specified in the warrant and the reports contained all the required information.

Section 47 Register of warrants and Emergency authorisations

The Act requires the chief officer of the law enforcement agency to keep a register of warrants and emergency authorisations. The register is required to specify certain particulars.

The register of warrants contained all the particulars required and was accurate.

Evidentiary certificates

Section 50 Provision for the issue of Evidentiary certificates

No evidentiary certificates were issued during this reporting period.

Notifications to the Attorney-General

Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney-General

Section 51 notifications were provided in relation to all warrant applications.

Section 52 Requirement to inform subject of surveillance

No orders were made requiring the subject of the surveillance to be informed.

Concluding comments

For the reporting period the NSW Crime Commission was compliant.

Recommendations

No recommendations.

Independent Commission Against Corruption

During the reporting period three surveillance device files were inspected and all warrants were granted.

We were satisfied that the Independent Commission Against Corruption had generally complied with its obligations under the Act.

Compliance with obligations relating to the keeping of documents connected with warrants and emergency authorisations

Warrants

Section 17 Applications for a surveillance device warrant

All three applications were made to eligible Judges. No applications were made to eligible Magistrates in the case of applications for a surveillance device authorising the use of a tracking device only. Due to an oversight the application form in relation to SD3/2010 was not dated.

Section 18 Remote application

There were no remote applications made.

Section 22 Extension and variation of surveillance device warrant

There were no variations or extensions to the warrants issued.

Section 23 Revocation of surveillance device warrant

There were no revocations during the reporting period.

Section 24 Discontinuance of use of surveillance device under warrant

No surveillance devices were discontinued.

Section 25 Application for retrieval warrant

No applications were made for retrieval warrants.

Section 26 Remote application

No remote applications were made for retrieval warrants.

Section 30 Revocation of retrieval warrant

No retrieval warrants were issued and consequently none were revoked.

Emergency authorisations

Section 31 Emergency use of surveillance devices – threat of serious personal violence or substantial property damage

There were no emergency uses of surveillance devices.

Section 32 Emergency authorisation – continued use of surveillance devices in participating jurisdiction

There was no emergency use of surveillance device warrants in participating jurisdictions.

Section 33 Application for approval after use of surveillance device without warrant or under emergency authorisation

There were no emergency uses of surveillance devices.

Compliance and monitoring

Section 40 Prohibition on use, communication or publication of protected information

While protected information was obtained through the use of surveillance devices, the information may be used in the future and the records of each use, communication and publication will be inspected in the future.

Section 41 Dealing with records obtained by use of surveillance devices

The Commissioner has established guidelines for dealing with protected information. The protected information is stored on the Commission premises and restricted to those authorised to deal with it.

There were no destructions carried out of protected information at the time of these inspections.

Section 44 Reports to eligible Judge or eligible Magistrate and Attorney-General

The reports for SD9/2009, SD10/2009 and SD12/2009 did not indicate whether or not there was any previous use of surveillance devices.

All other reports were provided to the eligible Judge and Attorney-General within the required time frame and all reports contained the required information.

Section 47 Register of warrants and Emergency authorisations

The Act requires the chief officer of the law enforcement agency to keep a register of warrants and emergency authorisations. The register is required to specify certain particulars.

The register of warrants contained all the particulars required and was accurate.

Evidentiary certificates

Section 50 Provision for the issue of Evidentiary certificates

No evidentiary certificates were issued during this reporting period.

Notifications to the Attorney-General

Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney-General

All notifications were provided to the Attorney-General in relation to each application and contained all the required particulars.

Section 52 Requirement to inform subject of surveillance

No orders were made requiring the subject of the surveillance to be informed.

Concluding comments

For the reporting period the Independent Commission Against Corruption was compliant.

Recommendations

No recommendations.

Police Integrity Commission

During the reporting period two new surveillance device warrants were applied for.

We were satisfied that the Police Integrity Commission had generally complied with its obligations under the Act.

Compliance with obligations relating to the keeping of documents connected with warrants and emergency authorisations

Warrants

Section 17 Applications for a surveillance device warrant

Both applications were made to eligible Judges. No applications were made to eligible Magistrates in the case of applications for a surveillance device authorising the use of a tracking device only.

Section 18 Remote application

There were no remote applications made.

Section 22 Extension and variation of surveillance device warrant

Neither of the warrants issued during this reporting period were varied or extended. Three warrants issued during the previous reporting period were each extended on two occasions.

Section 23 Revocation of surveillance device warrant

There was one revocation during the reporting period and the warrant was not executed.

Section 24 Discontinuance of use of surveillance device under warrant

There were no situations where the use of any surveillance device was discontinued during the reporting period and therefore no requirement to seek revocations of any warrants.

Section 25 Application for retrieval warrant

No applications were made for retrieval warrants.

Section 26 Remote application

No remote applications were made for retrieval warrants.

Section 30 Revocation of retrieval warrant

No retrieval warrants were issued and consequently none were revoked.

Emergency authorisations

Section 31 Emergency use of surveillance devices – threat of serious personal violence or substantial property damage

There were no emergency uses of surveillance devices.

Section 32 Emergency authorisation – continued use of surveillance devices in participating jurisdiction

There was no emergency use of surveillance device warrants in participating jurisdictions.

Section 33 Application for approval after use of surveillance device without warrant or under emergency authorisation

There were no emergency uses of surveillance devices.

Compliance and monitoring

Section 40 Prohibition on use, communication or publication of protected information

While protected information was obtained through the use of surveillance devices, the information may be used in the future and the records of each use, communication and publication will be inspected in the future.

Section 41 Dealing with records obtained by use of surveillance devices

The Commissioner has established guidelines for dealing with protected information. The protected information is stored on the Commission premises and restricted to those authorised to deal with it.

There were no destructions carried out of protected information at the time of these inspections.

Section 44 Reports to eligible Judge or eligible Magistrate and Attorney-General

All reports were provided to the eligible Judge and Attorney-General within the required time frame and all reports contained the required information.

Section 47 Register of warrants and Emergency authorisations

The Act requires the chief officer of the law enforcement agency to keep a register of warrants and emergency authorisations. The register is required to specify certain particulars.

The register of warrants contained all the particulars required and was accurate.

Evidentiary certificates

Section 50 Provision for the issue of Evidentiary certificates

No evidentiary certificates were issued during this reporting period.

Notifications to the Attorney-General

Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney-General

There were no fresh applications during the reporting period.

Section 52 Requirement to inform subject of surveillance

No orders were made requiring the subject of the surveillance to be informed.

Concluding comments

For the reporting period the overall compliance of the Police Integrity Commission with the Surveillance Devices Act was found to be of a high standard.

Recommendations

No Recommendations.

Appendix 1

Figure 5: Surveillance device warrants issued

Agency	01/08/08–30/06/09	01/07/09–30/06/10
NSW Police Force	426	591
NSW Crime Commission	65	258
Independent Commission Against Corruption	14	11
Police Integrity Commission	11	5
Total	516	865

Figure 6: Surveillance device warrants reports³

Agency	01/08/08–30/06/09	01/07/09–30/06/10
NSW Police Force	294	442
NSW Crime Commission	22	72
Independent Commission Against Corruption	9	11
Police Integrity Commission	11	0
Total	336	525

Figure 7: Surveillance device warrants revoked

Agency	01/08/08–30/06/09	01/07/09–30/06/10
NSW Police Force	82	102
NSW Crime Commission	24	26
Independent Commission Against Corruption	1	6
Police Integrity Commission	2	1
Total	109	135

Figure 8: Emergency use of surveillance devices

Agency	01/08/08–30/06/09	01/07/09–30/06/10
NSW Police Force	5	0
NSW Crime Commission	0	3
Independent Commission Against Corruption	0	0
Police Integrity Commission	0	0
Total	5	3

³ Reports received by the Attorney-General within the relevant year.

Surveillance device warrants may be issued for a maximum of 90 days. An application may be made for an extension of the warrant for a period not exceeding 90 days from when the warrant was due to expire. An application in respect of an extension to a warrant may be made on more than one occasion.

In relation to the NSW Police Force the range of period for which surveillance device warrants issued during the 2009/2010 financial year were in force ranged from two days to 277 days and the average was 64 days. For the NSW Crime Commission the period ranged from 6 to 176 days and the average was 91 days. For the Police Integrity Commission the period ranged from 13 to 88 days and the average was 70 days. For the Independent Commission Against Corruption the period ranged from six to 178 days and the average was 75 days.

Figure 9: Number of days use of surveillance devices authorised 01/07/09 to 30/06/10

Agency	Less than 30 days	30 to 60 days	60 to 90 days	More than 90 days ⁴
NSW Police Force	138	210	234	9
NSW Crime Commission	9	3	225	21
Police Integrity Commission	3	2	4	2
Independent Commission Against Corruption	1	0	4	0
Total	151	215	467	32

Figure 10: Average number of days use of surveillance devices authorised 01/07/09 to 30/06/10

Agency	Days
NSW Police Force	64
NSW Crime Commission	91
Police Integrity Commission	70
Independent Commission Against Corruption	75
Average	75

Figure 11: Outcome of use of surveillance device warrants 01/07/09 to 30/06/10

Agency	Arrests and charges	Relevant information obtained	Nil Information obtained or device not installed
NSW Police Force	92	221	129
NSW Crime Commission	1	30	41
Police Integrity Commission	0	0	0
Independent Commission Against Corruption	0	7	4
Total	93	258	174

⁴ Although the maximum numbers of days for each warrant is 90 days, these warrants were the subject of extension applications; some were extended on more than one occasion.

Figure 12: Types of offences⁵ for which surveillance devices authorised 01/07/09 to 30/06/10

	NSW Police Force	NSW Crime Commission	Independent Commission Against Corruption	Police Integrity Commission
Arson	4	0	0	0
Assault	19	0	0	0
Car re-birthing	5	0	0	0
Corruption	0	0	11	5
Drug offence	183	213	0	0
Extortion	11	0	0	0
Firearms offence	10	0	0	0
Fraud	5	1	0	0
Judicial offence	8	0	0	0
Kidnapping	6	2	0	0
Malicious damage	9	0	0	0
Money laundering	4	16	0	0
Murder	98	26	0	0
Robbery	73	0	0	0
Sexual offence	145	0	0	0
Terrorism	6	0	0	0
Other ⁶	5	0	0	0
Total	591⁷	258⁸	11	5

⁵ See Appendix 2.

⁶ These include stealing, child pornography, sale of unclassified material and receiving/goods in custody.

⁷ In addition two retrieval warrants were granted which target the same offence so were not included.

⁸ In addition two retrieval warrants were granted which target the same offence so were not included.

Figure 13: New South Wales Police Force offences targeted 01/07/09 to 30/06/10

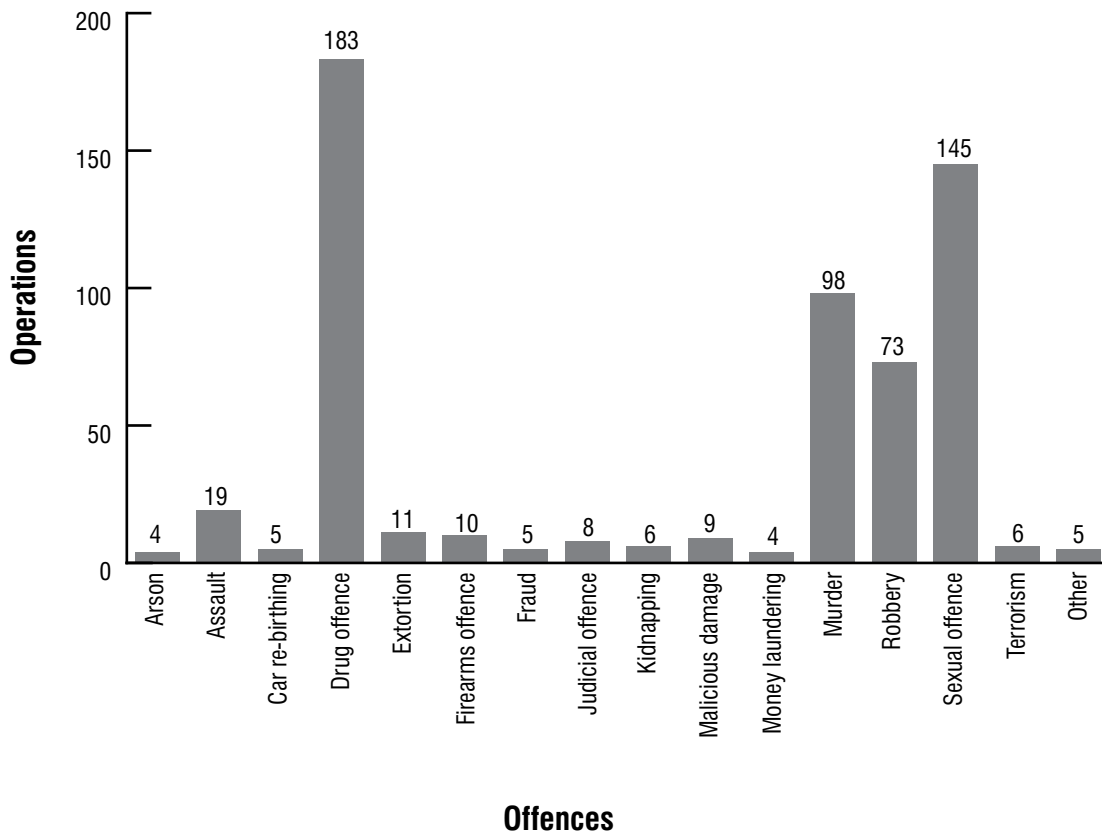
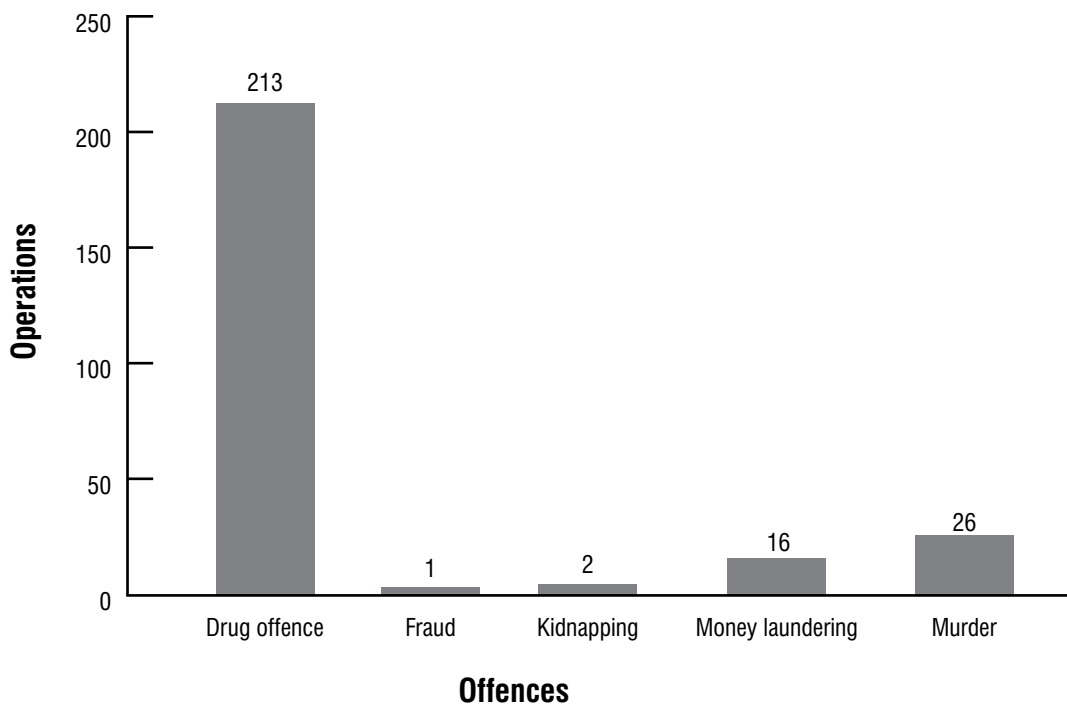


Figure 14: New South Wales Crime Commission offences targeted 01/07/09 to 30/06/10



Appendix 2

We have used the following categories to describe the offences targeted during operations:

- Arson
- Assault
- Car re-birthing
- Corruption offences
- Child pornography
- Drug offence
- Escape custody
- Extortion
- Firearms offence
- Fraud
- Judicial offence
- Kidnapping
- Malicious damage
- Money laundering
- Murder
- Public order offence
- Receiving/ goods in custody
- Robbery
- Sale of unclassified material
- Sexual offence
- Stealing
- Terrorism.

These are based on the categories used by the NSW Police Force in their Surveillance Devices Register with additions to account for offences targeted by other agencies and to provide for some individual operations not adequately described in the Register.

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