

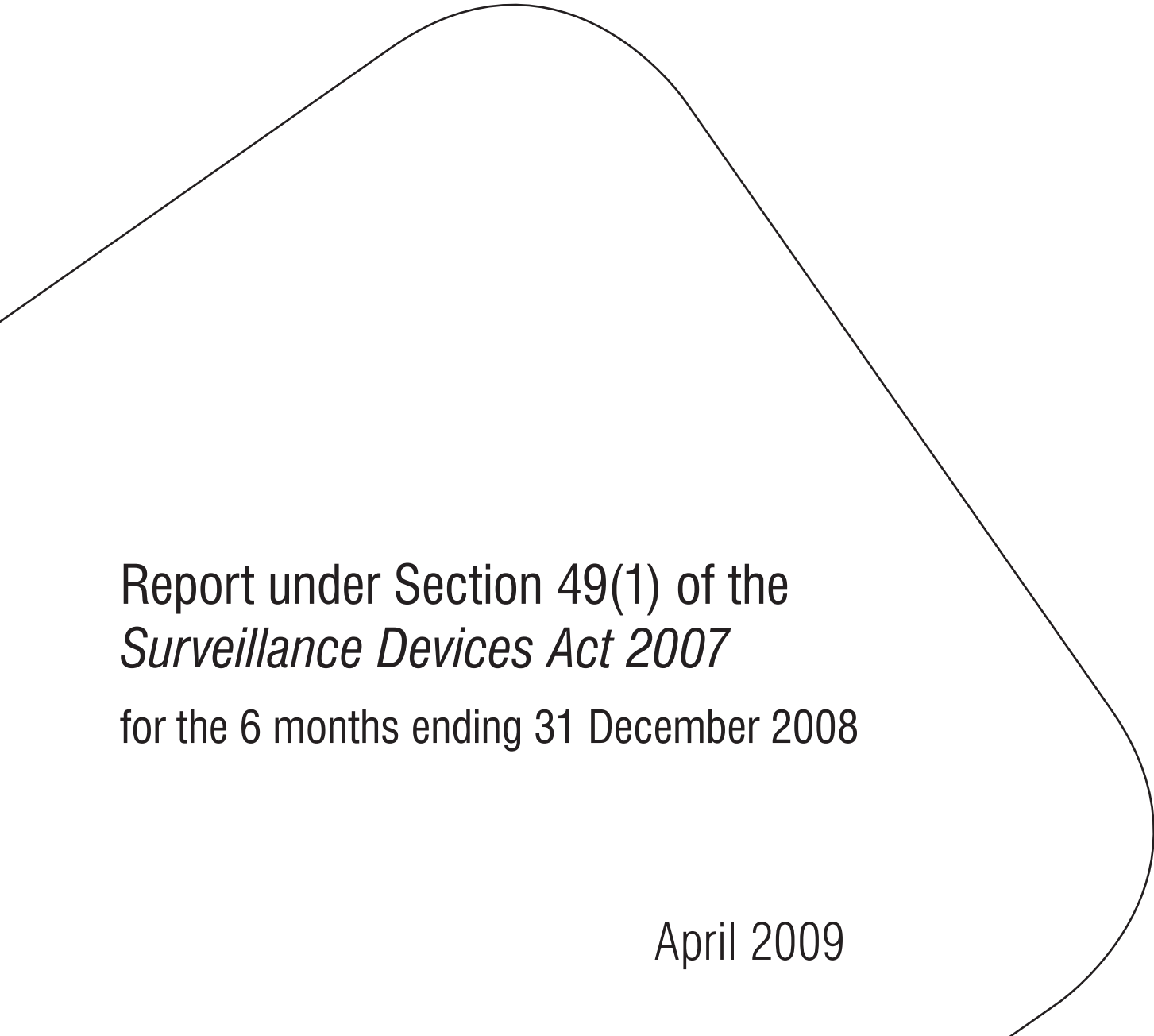


NSW Ombudsman

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

for the 6 months ending 31 December 2008

April 2009



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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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3 April 2009

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The Honourable John Hatzistergos MLC
NSW Attorney-General
Level 33, Governor Macquarie Tower
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Dear Attorney-General

Report under section 49(1) of the *Surveillance Devices Act 2007* for the six months ending 31 December 2008

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 the first report under section 49(1) of the *Surveillance Devices Act 2007* which covers our inspection of records relating to surveillance devices up to 31 December 2008.

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

Contents

Introduction	1
Scope of the Inspection	1
Inspection detail	1
Agency compliance reports	
NSW Police Force	3
Compliance with obligations relating to the keeping of documents connected with warrants and emergency authorisations	3
Compliance and monitoring	5
Evidentiary Certificates	6
Notifications to the Attorney-General	6
Concluding Comments	6
NSW Crime Commission	7
Compliance and monitoring	8
Evidentiary Certificates	8
Notifications to the Attorney-General	8
Concluding Comments	9
Independent Commission Against Corruption	11
Compliance with obligations relating to the keeping documents connected with warrants and emergency authorisations	11
Compliance and monitoring	12
Evidentiary Certificates	12
Notifications to the Attorney-General	12
Concluding Comments	13
Police Integrity Commission	15
Compliance with obligations relating to the keeping documents connected with warrants and emergency authorisations	15
Emergency Authorisations	16
Compliance and monitoring	16
Evidentiary Certificates	16
Notifications to the Attorney-General	16
Concluding Comments	17

Introduction

The *Surveillance Devices Act 2007 (NSW)* ('the Act') began operation on 1 August 2008 and repealed the *Listening Devices Act 1984 (NSW)*. The Act 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 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 agencies are currently the subject of these inspections:

- NSW Police Force
- NSW Crime Commission
- The Police Integrity Commission
- The Independent Commission Against Corruption.¹

The Ombudsman is required by section 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 made in accordance with these provisions.

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 agencies compliance with the Act and to provide public accountability through regular reporting to the Minister and Parliament. The approach taken in the inspection conducted by the Ombudsman was to inspect 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 was 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. Part 5 of the Act deals with compliance and monitoring and includes dealing with records obtained by use of surveillance devices, 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.

Inspection detail

The records in relation to the applications, warrants, register and reporting requirements are centralised within the smaller agencies. The Independent Commission against Corruption records were inspected in February 2009 as were the records of the NSW Crime Commission and Police Integrity Commission.

¹ Note: 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.

In the case of the NSW Police Force most records are located at the Prosecution Processes section and were inspected in October 2008 and January 2009. Protected information, which is information obtained from the use of a surveillance device under a warrant or an emergency authorisation, is located with the individual investigators and requires inspection at particular locations throughout the State. To this end a sample of protected information records resulting from surveillance device warrants used by the NSW Police Force were inspected at Tamworth. During inspections conducted under other legislative regimes inspecting officers also examined where protected information would be stored at Port Macquarie and Kempsey police stations.

I am pleased to report that each agency was helpful and co-operative in facilitating our inspection. I acknowledge the co-operation given by all agencies and the assistance from the Commissioner of Police through his staff in facilitating field visits. As the field visits occurred shortly after the commencement of the Act, protected information had not been used, communicated or published and as a result the inspections concentrated on the security and storage of the protected information.

NSW Police Force

During the reporting period 203 surveillance device files were inspected, SD08/001 to SD08/203. 169 warrants were issued and one was refused, a further 33 applications had not been proceeded with as at 31 December 2008.

As with the implementation of any new piece of complicated legislation, there were some teething problems identified during the inspections, particularly in relation to whether a warrant or an emergency authorisation ought to be used. Over time these problems have been addressed.

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 170 applications were made to eligible Judges. No applications were made to eligible Magistrates for a surveillance device warrant authorising the use of a tracking device only.

As the *Surveillance Devices Act 2007* came into operation on 1 August 2008 and the *Listening Devices Act 1984* was consequently repealed, it was necessary to make fresh applications for those devices which were authorised under the *Listening Devices Act 1984* and still in operation on that date. This was done with the assistance of the eligible judge granting the relevant warrants at 12.01am on 1 August 2008.

Both SD08/037 and SD08/050 should have been emergency authorisations as the use of the devices occurred prior to the application for the warrants. The warrants were granted by the eligible judge and were granted after the devices had already been used. However there is no provision in the Act for retrospective authorisation.

SD05/041: The warrant file contained a copy of the warrant but there was no original on the file.

SD08/012: Warrant stated the offence as 'Supply prohibited drugs'. The affidavit and the Section 51 Notification to the Attorney-General however stated the offence as 'armed robbery offences'. This was an error on the part of the officer drafting the warrant.

Warrant SD08/027 was issued on 10/8/08 and discontinued on 14/8/08. The warrant expired on 18/8/08. The warrant was subsequently revoked on 7/10/08 after it had already expired. Section 24(2) of the Act requires a revocation to be made where devices are discontinued. However, it is questionable whether a warrant can be revoked after it has expired.

On file SD08/076 the application was dated 11/9/08 while the warrant was issued on 10/9/08.

On file SD08/085 the second page of the application was missing and therefore no application date was discernable.

On file SD08/084 the application was not dated and no officer was named as the applicant.

On files SD08/091 and SD08/094 there was no copy of the application.

On file SD08/096 there was a typographical error and the applicant from a previous warrant was incorrectly named as the applicant for this warrant.

Section 18 Remote Application

There were no remote applications made. However, an attempt was made to have an urgent warrant issued on file SD08/159 by telephone. There was no section 51 notice sent to the Attorney-General and as a result the warrant issued contravened Section 51(2) of the Act and was immediately revoked. A fresh application was made and a warrant was granted under file SD08/164.

Section 22 Extension and variation of surveillance device warrant

22 warrants were varied and several warrants were varied multiple times. One warrant had six variations and another had four variations.

An issue has arisen in relation to the variation of warrants. Relevant forms and processes were developed by a cross agency working party prior to the implementation of the Act. The process for the application and issue of variations to warrants was designed to allow the eligible judge to be presented with a variation which could be attached to the warrant. Section 22(5) of the Act states: 'An eligible judge or eligible Magistrate who grants an application must endorse the new expiry date or the other varied term on the original warrant.' The eligible Judges have taken the view that this section requires variations to be annotated on the original warrant. As a result, especially in the case of multiple variations, it is becoming cumbersome for the judges to write the details of each variation on the actual warrant concerned. While it is easy for an amended expiry date to be added to the warrant some conditions require different vehicles, premises or additional targets over the period of the warrant and there appears to be a need to amend the standard warrant template to provide sufficient space for the endorsement of variations otherwise, it may be necessary to amend section 22(5) of the Act.

The Act does not require a section 51 notice to be completed in relation to an application for a variation. However it seems to be the practice of the NSW Police Force to complete section 51 notices in relation to applications for variations.

After SD08/010 was granted a variation to the warrant was required. However the variation was mistakenly requested under section 17 rather than more appropriately under section 22. The original SD08/010 warrant was for surveillance devices in relation to two separate vehicles. Some time later the registration plate on one of the vehicles was changed which necessitated the variation.

There was a typographical error in warrant SD08/171 which inadvertently changed the sex and identity of one of the persons whose conversations would be listened to.

Section 23 Revocation of surveillance device warrant

There were 31 revocations during the reporting period.

Section 24 Discontinuance of use of surveillance device under warrant

In all cases the use of the surveillance device was discontinued prior to the warrant being revoked.

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 set between the discontinuance and the revocation of the warrant.

SD08/010 was revoked on 17 September 2008 but there was no indication as to when the use of the surveillance device was discontinued. 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.

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

On three occasions surveillance devices were used without a surveillance device warrant in emergency situations relating to the threat of personal violence or substantial property damage.

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

The emergency use of the surveillance devices under section 31 were subsequently approved by an eligible judge within the two day time frame.

Compliance and monitoring

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

During this reporting period inspections were conducted on protected information obtained by the use of surveillance devices at Tamworth. The protected information had not been used, communicated or published at the time of the inspection. Inspection officers examined the arrangements at Tamworth, Kempsey and Port Macquarie police stations for the storage and security of protected information and were satisfied that the officers responsible were aware of their obligations and appropriate security was in place.

Section 41 Dealing with records obtained by use of surveillance devices

The Commissioner has established guidelines for dealing with protected information. The officers at the locations inspected had copies of these guidelines and the relevant registers which are provided when applications are made for surveillance device warrants.

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

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. Copies of the relevant reports required were on file but there was no information as to when the reports were provided to the relevant judicial officer or to the Attorney-General. Officers have indicated that they will address this issue by noting on the reports the relevant dates when the reports were provided to the Judge or Magistrate, and to the Attorney-General.

Among other things a report under section 44 requires the particulars of any premises or vehicles on or in which a device was installed or any place at which a device was used. In both SD08/062 and SD08/063 warrants were granted to use one listening device on or about the body of a specified person. The reports on these operations stated at paragraph 5: 'The listening device was installed into premises at a [specified] Detectives Offices at a [specified address]'. This appears to give the impression that the listening device was installed in police premises. If the device was used on or about the body of the person nominated while they were in the Detectives Offices at the nominated premises, the report should have set this out more clearly.

In the report for SD08/137 the date the report was given to the eligible Judge was 1/7/08. This was clearly a typographical error and should have been 7/1/09.

The following warrants required reports to be provided to the eligible judge and the Attorney-General within a specified number of days following the expiry of the warrant. The following files did not contain such reports:

SD08/002	SD08/022	SD08/054
SD08/006	SD08/023	SD08/059
SD08/007	SD08/028	SD08/079
SD08/008	SD08/029	SD08/083
SD08/009	SD08/033	SD08/117
SD08/010	SD08/035	
SD08/013	SD08/046	

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. A number of discrepancies were identified between the register and the original warrant in the case of SD08/021, SD08/027, SD08/078, SD08/084, SD08/125 and SD08/116. These included discrepancies in the period of the warrant, expiry dates, relevant offences and the identity of the principal law enforcement officer responsible for the warrant.

Emergency authorisations were listed in the register but were not clearly defined as emergency authorisations. The relevant information required was included. Relevant staff have undertaken to examine how better to distinguish between warrants and authorisations in the future.

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

A number of errors were identified in the s.51 notifications for warrants SD08/021, SD08/048, SD08/071, SD08/116, SD08/148, SD08/164 and SD08/169. The errors included discrepancies with warrant details relating to the name of the law enforcement officer primarily responsible for the warrant, the number and type of surveillance devices intended to be used, the period sought in the warrant application and the officers who would be using listening devices. In addition, there was no section 51 notice on the file for warrant SD08/164.

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, compliance by the NSW Police Force with the Surveillance Devices Act was found to be generally of a high standard. There were some teething problems relating to record keeping especially in relation to emergency authorisations. However, these have now been addressed. A number of minor clerical errors in records were identified but none were considered to be material.

The timely reporting of the results of the use of surveillance devices appears to be a problem which still needs to be addressed.

As this was the first inspection of records under this legislation and as protected information received as a result of the use of surveillance devices has not been disseminated widely it was not possible to examine how that protected information was dealt with by the investigators. This aspect of compliance will be examined during future inspections and reported on more fully in the next six monthly report.

Recommendations to NSW Police Force

1. That steps be taken to ensure compliance with the requirement to make timely reports on the use of surveillance devices to eligible Judges/Magistrates and the Attorney-General.
2. That a record be kept of the date on which section 44 reports are delivered to the eligible judicial officer and Attorney-General.
3. That a record be kept of the date of discontinuance of a surveillance device.
4. That the warrant template be redesigned so as to better facilitate the recording of variations by eligible judicial officers.

NSW Crime Commission

During the reporting period 12 surveillance device files 08/06922, 08/075756, 08/07580, 08/08677, 08/09154, 08/09155, 08/09301, 08/09302, 08/09303, 08/09304, 08/09305, and 08/09394 were inspected. All warrants were granted.

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

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

Warrants

Section 17 Applications for a surveillance device warrant

All 12 applications were made to eligible Judges. No applications were made to eligible Magistrates for a surveillance device warrant 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

One warrant was varied.

An issue has arisen in relation to the variation of warrants. Relevant forms and processes were developed by a cross agency working party prior to the implementation of the Act. The process for the application and issue of variations to warrants was designed to allow the eligible judge to be presented with a variation which could be attached to the warrant. Section 22(5) of the Act states: 'An eligible judge or eligible Magistrate who grants an application must endorse the new expiry date or the other varied term on the original warrant.' The eligible Judges have taken the view that this section requires variations to be annotated on the original warrant. As a result especially in the case of multiple variations, it is becoming cumbersome for the judges to write the details of each variation on the actual warrant concerned. While it is easy for an amended expiry date to be added to the warrant some conditions require different vehicles, premises or additional targets over the period of the warrant and there appears to be a need to amend the standard warrant template to provide sufficient space for the endorsement of variations otherwise, it may be necessary to amend section 22(5) of the Act.

Section 23 Revocation of surveillance device warrant

There were 11 revocations during the reporting period.

Section 24 Discontinuance of use of surveillance device under warrant

Section 24 of 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. In relation to the warrants which had been revoked there was no indication as to whether or not the use of the device was discontinued. The officers responsible for the keeping of the records have indicated that this will be addressed in the future.

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 uses of surveillance devices without a warrant.

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 will be used in future briefs of evidence 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.

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 section 44 reports relating to warrants where surveillance devices were not used contained a single sentence indicating that the device was not used. While this is sufficient to address sections 44(1), (a)–(f), it does not address section 44(1)(g). A further sentence would be required containing particulars of any previous use of a surveillance device in connection with the relevant offence in respect of which the warrant was issued. Some reports were combined with the result that details relating to more than one warrant were included in a report. The Act appears to require a report for each individual warrant and this would be preferable to avoid any confusion. The officers responsible for the keeping of the records have indicated that these issues will be addressed in the future.

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

The section 51 notices relating to several surveillance device warrants were combined. Although the Act does not specifically preclude combined notices, the wording appears to require that individual notices and reports relating to each warrant be prepared. The officers responsible for the keeping of the records have indicated individual notices will be prepared in the future.

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 compliance by NSW Crime Commission with the Surveillance Devices Act was found to be generally of a high standard.

Recommendations to the NSW Crime Commission

1. That section 51 notices and section 44 reports are individually prepared for each warrant to avoid any confusion.
2. That the warrant file contains an indication of the date and time the use of surveillance devices are discontinued when in the opinion of the chief officer the use of the device is no longer required as per section 24 of the Act.
3. That the warrant template be redesigned so as to better facilitate the recording of variations by eligible judicial officers.

Independent Commission Against Corruption

During the reporting period seven surveillance device files were inspected, 1/2008 to 7/2008. All warrants were granted.

We were satisfied that the Independent Commission Against Corruption had generally complied with its obligations under the Act. The exceptions are detailed below.

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

Warrants

Section 17 Applications for a surveillance device warrant

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

There was no date on the application for warrant 3/2008. While the Act does not require the application to be dated it is good administrative practice and it appears to be the Commission's general practice to date applications. All other applications inspected were dated; this appeared to simply have been an oversight.

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 31 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 will be used in future briefs of evidence and the records of each use, communication and publication will be inspected in the in the future.

Section 41 Dealing with records obtained by use of surveillance devices

The Commissioner has established guidelines for dealing with protected information.

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 warrant reports in relation to warrants SD 4/2008 and SD 5/2008 indicated that two listening devices were installed in specified premises and the premises mentioned in the report appeared to be different from the premises specified in the warrant. If the surveillance device had been installed at an address different from the address in the warrant, *prima facie* the use of the device at this address was unlawful unless subject to a warrant variation.

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.

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

The section 51 notices to the Attorney-General in relation to surveillance device warrants 4/2008 and 5/2008 were combined. Although the Act does not specifically preclude combined notices and reports, the wording presumes that individual notices and reports relating to each warrant be prepared. I also believe this is a more practical approach as the combination of section 51 notices can lead to confusion as to which devices and which locations are specific to which warrants.

The following inconsistencies were noted between the warrant and the section 51 notices to the Attorney-General:

For warrants 1/2008, 2/2008, 4/2008 and 5/2008 the Principal Law Enforcement Officer listed as the officer responsible for the warrant in the register was different from the officer stated in the relevant warrant as the officer responsible for that warrant.

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 compliance by the Independent Commission Against Corruption with the Surveillance Devices Act was found to be generally of a high standard.

Recommendations to the ICAC

1. That section 51 notices and section 44 reports are individually prepared for each warrant to avoid any confusion.

Police Integrity Commission

During the reporting period 11 surveillance device files were inspected, 08/001 to SD08/012. 08/003 did not relate to a warrant but instead related to the revocation of warrants 08/001 and 08/002 and should not have been given a number in the register.

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

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

Warrants

Section 17 Applications for a surveillance device warrant

All 11 applications were made to eligible Judges. No applications were made to eligible Magistrates for a surveillance device warrant authorising the use of a tracking device only.

Section 18 Remote Application

There were two remote applications made by telephone – warrants 08/009 and 08/010. There were some irregularities in the records associated with these warrants. With respect to the first warrant, the notice sent to the Attorney-General was labelled 08/008. A note was made that this was a typographical error and should have been 08/009. There was no notice in relation to 08/010. It appeared however, that the wrongly numbered notice was intended to cover both 08/009 and 08/010 but this was not clear. This highlights the problem of using one section 51 notice for more than one warrant. Also the warrant for 08/009 stated that the warrant was for a device to be fixed to an unknown hire car but the register nominated a vehicle with a specified registration number for warrant 08/009.

Section 22 Extension and variation of surveillance device warrant

Three warrants were extended and none were varied.

Section 23 Revocation of surveillance device warrant

There were two revocations during the reporting period.

Section 24 Discontinuance of use of surveillance device under warrant

Section 24 of the *Surveillance Devices Act 2007* 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. In relation to the warrants which had been revoked there was no indication as to whether or not the use of the device was 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 will be used in future briefs of evidence and the records of each use, communication and publication will be inspected in the in the future.

Section 41 Dealing with records obtained by use of surveillance devices

The Commissioner has established guidelines for dealing with protected information.

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

There was no section 44 report on file for surveillance device warrant 08/0002. The expiry date of the warrant was 17 November 2008 and the warrant required a report to be forwarded within 60 days of expiry.

Section 47 Register of warrants and emergency authorisations

The register included 08/003 which was not in fact a warrant but related to the revocation of surveillance device warrants 08/001 and 08/002.

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

The section 51 notices relating to several surveillance device warrants were combined. Although the Act does not specifically preclude combined notices and reports, the wording indicates that individual notices and reports relating to each warrant be prepared. I also believe this is a more practical approach as the combination of section 51 notices and section 44 reports can lead to confusion as to which devices and which locations are specific to which warrants. The Police Integrity Commission does not consider this necessary and has observed that the Attorney-General has not found a problem with this practice in the past.

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 reasonable standard.

Recommendations to the Police Integrity Commission

1. That section 51 notices and section 44 reports are individually prepared for each warrant to avoid any confusion.
2. That the warrant file contains an indication of the date and time the use of surveillance devices are discontinued when in the opinion of the chief officer the use of the device is no longer required as per section 24 of the Act.

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