



REPORT TO:

THE HONOURABLE JOHN ELFERINK MLA  
ATTORNEY-GENERAL and MINISTER FOR JUSTICE

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

FIRST REPORT 2014

**Date report issued:** 19 March 2014

## **INTRODUCTION**

The *Surveillance Devices Act 2007* (the Act) came into operation on 1 January 2008. The purposes of the Act are:

- (a) to regulate the installation, use, maintenance and retrieval of surveillance devices; and*
- (b) to restrict the use, communication and publication of information obtained through the use of surveillance devices or otherwise connected with surveillance device operations; and*
- (c) to establish procedures for law enforcement officers to obtain warrants or emergency authorisations for the installation, use, maintenance and retrieval of surveillance devices in criminal investigations extending beyond this jurisdiction; and*
- (d) to recognise warrants and emergency authorisations issued in other jurisdictions; and*
- (e) to impose requirements for the secure storage and destruction of records, and the making of reports to Judges, magistrates and Parliament, in relation to surveillance device operations.*

Section 63(1) of the Act requires the Ombudsman to inspect the records of the Northern Territory Police Force (NT Police), to determine the extent of compliance with the Act by NT Police and its law enforcement officers.

The Ombudsman is required, under section 64(1) of the Act, to report to the Minister at six monthly intervals on the results of each inspection. Section 64(2) of the Act provides that the Minister must, within 7 sitting days after receiving a report, table a copy of it in the Legislative Assembly.

Since the last report issued in May 2013 there has been one inspection. It took place on 11 December 2013 and covered the period from 19 April 2013 to 11 December 2013.

## **BACKGROUND**

The Commissioner has delegated to the Technical and Covert Section, the 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. Original records are maintained and held by the relevant Law Enforcement Officer (LEO) or the section in which the LEO works.

## **REGISTER OF WARRANTS**

Section 62 of the Act, requires the NT Police to keep a Register of Warrants and Emergency Authorisations. The Register was examined by staff from my Office on 11 December 2013. The Register documented 46 warrants for the relevant period. The Register did not record any emergency authorisations for the period to 11 December 2013.

## **INSPECTION**

Records relating to twenty four (24) warrants was inspected:

- These 24 warrants authorised the use of listening, optical or tracking devices, or a combination of one or more of these devices.
- The warrants included nine (9) authorising the use of optical and listening devices; eight (8) authorising the use of tracking devices; four (4) authorising the use of tracking and listening devices; two (2) authorising the use of a listening device; and one (1) authorising the use of all three devices.
- Of the records inspected, no retrieval warrants, extension warrants, or emergency authorisations were issued.
- Of the records inspected, there were no applications that were refused or withdrawn.

## **ISSUES IDENTIFIED**

### **Obtaining a 'new' warrant rather than an extension**

The Act provides for extension, variation or revocation of a warrant at any time before its expiry (sections 24 and 25). However, in a number of cases identified during the inspection, NT Police did not obtain an extension prior to expiry of an existing warrant but obtained a new warrant within a few days of expiry of the original for essentially the same surveillance activity.

An extension of a warrant can be granted for up to 90 days. However, there appears to be nothing in the Act to preclude new warrants being granted by a judicial officer over time to authorise essentially the same surveillance.

A number of issues were identified by inspection staff in relation to cases where a new warrant was issued following on from an original warrant:

- The NT Police Register includes a section headed '*extension/variation/revocation*' under which appeared the words '*urgent*' (once), '*renewed*' (twice), '*extension*' (3 times) and '*continued*' (7 times). This created some confusion for inspection staff and Police who facilitated their inspection as 10 did not reflect the statutory categories. This was exacerbated by the ultimate discovery that none of the records inspected related to warrant extensions, variations or revocations. All related to 'new' warrants. The lack of clear and consistent terminology in the Register made monitoring of this function more complicated than necessary.
- In a number of cases, devices remained in place for three or four days after expiry of the original warrant and prior to a new warrant being obtained. The NT Police advised that these devices were turned off when the original warrant expired and '*were no longer able to record, be monitored or be listened to*'.

- In one case, while there were conditions attached to the original warrant, the conditions were not recorded on the new warrant. Police advised that the issuing Judge for the new warrant was not informed of the conditions attached to the original warrant *'as there is no obligation under the Act to do so for a new warrant, and as the devices were already installed under the previous warrant, the conditions of the original warrant were already met'*.
- In another case, a separate report was not provided to the Judge who endorsed the original warrant. A law enforcement officer must, within the time stated in the warrant, make a report to the Judge or Magistrate who issued the warrant. NT Police acknowledged that separate reports should have been provided but stated that a single report addressing both warrants was provided to the second Judge.
- An application for a warrant recorded as an *'extension'* was not found on file. NT Police advised that a new warrant was issued in this case and the application was subsequently placed on file.
- A new warrant was issued while an original warrant was still in force. NT Police acknowledged that although a new warrant was issued, the original warrant could have been varied or extended. Nevertheless, NT Police stated that the issue of a new warrant was not unlawful, and noted that the second warrant was not executed.

### **Other issues**

Other matters outlined below lend weight to the view that it would be prudent for NT Police to give increased attention to detail with respect to compliance and recording of information:

- The Police Register noted a warrant for optical and listening devices but the technical log incorrectly documented that a tracking and a listening device were recovered.
- The date on which a report was submitted to a Judge was not included, so it was not clear whether the report was provided within time. Police advised that the report was submitted five days before it was required.
- A report to a Judge only documented an optical device being used, while the warrant and the technical log documented that an optical and listening device were authorised. Police advised that only a listening device was installed. Police also advised that the technical log referred to what the warrant authorised and not what was actually installed. To address this issue, the OIC of the Technical and Covert Section has been tasked to amend technical logs to provide greater detail.
- There were some cases where reports to the Judge documented that the conditions of warrants were complied with when, in fact, no conditions had been imposed. Police advised that the Technical and Covert Section as Registrar of these records does not compile or deliver these reports to Judges and does not have a role in their quality control. Police advised they will raise this issue with the officers in charge of Police sections that use the Act.

- The start date for use of devices in a report to a Judge was incorrect, as the devices had not yet been installed by that time.
- One warrant (which appeared to be based on a superseded template) failed to contain a space in which the Judge could note the period in which a report is to be provided by Police. This is a requirement of section 22(1)(b)(viii) of the Act. Police advised that the authorising Judge did not enter the time requirement and the law enforcement officer did not take steps to ensure that the Judge nominated a period. It is important that Police making application for a warrant give every assistance to the judiciary to ensure that statutory requirements are met. The use of current template documents should be sufficient to address this issue.

### **FINDING**

In my previous report, I noted a deficiency with regard to responsible law enforcement officers failing to provide reports to judicial officers within the required time frame. I stated:

*NT Police have provided an outline of new strategies they propose to implement in order to overcome this ongoing issue. Several steps have been outlined as an alternative to the one step approach currently in place. In addition to the new strategies NT Police are working towards implementing a specialised warrant administration database. The next inspection report will record the extent to which proposed changes have been implemented and if the issue has been resolved.*

While the issue I raised in that report has not recurred, the above discussion makes it clear that there are a number of process and record keeping issues that need to be addressed by NT Police generally and by responsible law enforcement officers.

These issues should be addressed as a matter of priority in order to promote understanding and compliance with the Act by NT Police Officers, and to demonstrate compliance with the Act in clear and simple terms for the benefit of both my inspection staff and senior managers within NT Police tasked with monitoring compliance.

On the basis of the records inspected, and further information obtained from NT Police to clarify those records, I am satisfied that, with the exception of issues referred to above, NT Police and its law enforcement officers have complied with the Act during the relevant period.



**Peter Shoyer**  
**Ombudsman**  
19 March 2014

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

### **1. SURVEILLANCE DEVICE WARRANTS**

**1.1 - Section 22(1)(b)(i) Warrant records the name of applicant on warrant.**

***Inspection 11 December 2013:*** Copies of 24 warrants inspected recorded the name of the applicant in compliance with this section.

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

***Inspection 11 December 2013:*** Copies of 24 warrants inspected recorded the offence for which the warrant was issued in compliance with this section.

**1.3 - Section 22(1)(b)(iii) Warrant records the date the warrant was issued.**

***Inspection 11 December 2013:*** Copies of 24 warrants inspected recorded the date the warrant was issued in compliance with this section.

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

***Inspection 11 December 2013:*** Copies of 24 warrants inspected recorded the kind of surveillance device authorised to be used in compliance with this section.

**1.5 - Section 22(1)(b)(v) Warrant records the name on the warrant the place where the warrant is to be used.**

***Inspection 11 December 2013:*** Copies of 24 warrants inspected recorded the name of the place where the warrant was to be used in compliance with this section.

**1.6 - Section 22(1)(b)(vi) Warrant to record the use of a surveillance device on a thing or class of thing.**

***Inspection 11 December 2013:*** Copies of 24 warrants inspected recorded the name of the thing or class of thing where the warrant was to be used in compliance with this section.

**1.7 - Section 22(1)(b)(vii) Warrant records the name of the person or, if the identity of the person is unknown, this fact.**

***Inspection 11 December 2013:*** Copies of 24 warrants inspected recorded the name of the person in compliance with this section.

**1.8 - Section 22(1)(b)(viii) Warrant records the period during which it is was in force (which must not exceed 90 days).**

***Inspection 11 December 2013:*** Copies of 24 warrants inspected did not exceed a period of 90 days in compliance with this section.

**1.9 - Section 22(1)(b)(ix) Warrant records the name of the law enforcement officer responsible for executing the warrant.**

***Inspection 11 December 2013:*** Copies of 24 warrants inspected recorded the name of the law enforcement officer responsible for executing the warrant in compliance with this section.

**1.10 - Section 22(1)(b)(x) Warrant records the conditions on the warrant subject to which a place may be entered, or a surveillance device may be used.**

***Inspection 11 December 2013:*** Copies of 24 warrants inspected recorded the conditions upon which a place may be entered, or a surveillance device may be used in compliance with this section.

**1.11 - Section 22(1)(b)(xi) Warrant records the time within which a report is to be made to a Judge or Magistrate under the requirements of section 58.**

***Inspection 11 December 2013:*** All but one of the 24 warrants inspected recorded the time in which the report is to be made to a Judge or Magistrate in compliance with this section (see *Issues Identified*).

**1.12 - Section 22(2) Warrant is signed by a Judge or Magistrate.**

***Inspection 11 December 2013:*** Copies of 24 warrants inspected indicated that all warrants were signed by a Judge or Magistrate in compliance with this section.

## **2. EXTENSION, VARIATION AND REVOCATION OF WARRANTS**

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

***Inspection 11 December 2013:*** There were one application for extension but a new warrant was issued.

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

***Inspection 11 December 2013:*** There were no applications for any variations of the terms of any warrants examined during the inspection of records.

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

***Inspection 11 December 2013:*** There were no revocations of the warrants examined during the inspection of records.

## **3. RETRIEVAL WARRANTS**

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

***Inspection 11 December 2013:*** Records revealed no retrieval warrants since the last inspection.

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

***Inspection 11 December 2013:*** Records revealed no retrieval warrants since the last inspection.

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

***Inspection 11 December 2013:*** Records revealed no retrieval warrants since the last inspection.

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

***Inspection 11 December 2013:*** Records revealed no retrieval warrants since the last inspection.



**3.5 - Section 30(1)(b)(v) Retrieval warrants do not exceed period (90 days) during which the warrant was in force.**

***Inspection 11 December 2013:*** Records revealed no retrieval warrants since the last inspection.

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

***Inspection 11 December 2013:*** Records revealed no retrieval warrants since the last inspection.

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

***Inspection 11 December 2013:*** Records revealed no retrieval warrants since the last inspection.

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

***Inspection 11 December 2013:*** Records revealed no retrieval warrants since the last inspection.

**3.9 - Section 30(2) Retrieval warrant signed by the issuing Judge or Magistrate.**

***Inspection 11 December 2013:*** Records revealed no retrieval warrants since the last inspection.

#### **4. EMERGENCY AUTHORISATIONS**

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

***Inspection 11 December 2013:*** There were no Emergency Authorisations sought during this reporting period.

## **5. DEALING WITH RECORDS OBTAINED BY USE OF SURVEILLANCE DEVICES**

**5.1 - Section 55(1)(a) the Chief Officer ensures that a record or report obtained by the use of a surveillance device is kept in a secure place.**

*Inspection 11 December 2013:* Surveillance devices copied documentation is secured within the Peter McAulay Centre, Berrimah, under the security of the Technical and Covert Section. This inspection confirmed that these copies were kept in a secure place.

**5.2 - Section 55(1)(b) The Chief Officer ensures that a record or report mentioned in subsection 55(1)(a) is destroyed if satisfied it is not likely to be required in relation to a purpose mentioned in section 52(3), 53(1) or 54(1).**

*Inspection 11 December 2013:* No records have been destroyed since the last inspection.

## **6. REPORTING AND RECORD-KEEPING**

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

*Inspection 11 December 2013:* Of the twenty four (24) warrants inspected, twenty three (23) documented that a report to the Judge or Magistrate had been provided in the required timeframe. In the other case, no timeframe for reporting was set but a report was provided.

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

*Inspection 11 December 2013:* NT Police complied with this provision.

**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 or Magistrate.**

*Inspection 11 December 2013:* NT Police complied with this provision.

**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 or Magistrate.**

*Inspection 11 December 2013:* NT Police complied with this provision.

**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 to the Judge or Magistrate.**

***Inspection 11 December 2013:*** NT Police complied with this provision.

**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 to the Judge or Magistrate.**

***Inspection 11 December 2013:*** NT Police complied with this provision.

**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 to the Judge or Magistrate.**

***Inspection 11 December 2013:*** NT Police complied with this provision.

**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 to the Judge or Magistrate.**

***Inspection 11 December 2013:*** NT Police complied with this provision.

**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 to the Judge or Magistrate.**

***Inspection 11 December 2013:*** NT Police complied with this provision.

**6.10 - Section 58(2)(b)(viii) If the warrant was executed the details of the compliance with the conditions to which the warrant was subject must be stated in the report to the Judge or Magistrate.**

***Inspection 11 December 2013:*** NT Police complied with this provision.

**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 to the Judge or Magistrate.**

***Inspection 11 December 2013:*** No extensions or variations were obtained during this reporting period.

**6.12 – Section 58(2)(c)(ii) If the warrant was extended or varied the reasons for the extensions or variations must be stated in the report to the Judge or Magistrate.**

***Inspection 11 December 2013:*** No extensions or variations were obtained during this reporting period.

**6.13 – Section 58(3)(a) If a retrieval warrant was obtained, the details of any place entered, anything opened and anything removed and replaced under the warrant must be stated in the report to the Judge or Magistrate.**

***Inspection 11 December 2013:*** No retrieval warrants were issued during this period.

**6.14 – Section 58(3)(b) If a retrieval warrant was obtained whether the device was retrieved under the warrant must be stated in the report to the Judge or Magistrate.**

***Inspection 11 December 2013:*** No retrieval warrants were issued during this period.

**6.15 – Section 58(3)(c) If a retrieval warrant was obtained but the device was not retrieved, the reason why must be stated in the report to the Judge or Magistrate.**

***Inspection 11 December 2013:*** No retrieval warrants were issued during this period.

**6.16 – Section 58(3)(d) If a retrieval warrant was obtained, the details of compliance with the conditions (if any) to which the warrant was subject must be stated in the report to the Judge or Magistrate.**

***Inspection 11 December 2013:*** No retrieval warrants were issued during this period.

## **7. KEEPING DOCUMENTS FOR WARRANTS AND EMERGENCY AUTHORISATIONS.**

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

***Inspection 11 December 2013:*** Copies of warrants and ancillary documentation were inspected, each contained within its own 'warrant file'. The Commissioner of Police has delegated his powers in relation to record keeping under the Act to the Commander, Crime and Specialist Service Command. Copies of files are held within a secure facility situated in the Technical and Covert Section.

**7.2 – Section 60(b) The Chief Officer of the law enforcement agency retained each notice given to the Chief Officer (by a Judge or Magistrate) under section 25(4) of revocation of a warrant.**

***Inspection 11 December 2013:*** No warrants were revoked during this reporting period.

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

***Inspection 11 December 2013:*** There were no emergency authorisations sought during this reporting period.

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

***Inspection 11 December 2013:*** There were no emergency authorisations sought during this reporting period.

**7.5 – Section 60(e)(i) The Chief Officer retained a copy of each application made by a law enforcement officer of the agency for a warrant.**

***Inspection 11 December 2013:*** All but two files contained copies of warrant applications. On becoming aware of the missing applications, these were sourced by NT Police and placed on file.

**7.6 – Section 60(e)(ii) The Chief Officer retained a copy of each application made for an extension, variation or revocation of a warrant.**

***Inspection 11 December 2013:*** There was one application for an extension, a copy of which has been retained. However, a new warrant was issued rather than an extension. There were no variations or revocations of warrants during this reporting period.

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

***Inspection 11 December 2013:*** There were no emergency authorisation applications or authorisations during this reporting period.

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

*Inspection 11 December 2013:* Of the records inspected relating to completed matters, a copy of each report under section 58 was retained.

**7.9 – Section 60(g) The Chief Officer retained a copy of each certificate issued by a senior officer of the agency under section 71 (Evidentiary Certificates).**

*Inspection 11 December 2013:* During this reporting period no Evidentiary Certificates were issued.

## **8. OTHER RECORDS TO BE KEPT**

**8.1 – Section 61(a) The Chief Officer of a law enforcement agency must keep a statement as to whether each application made by a law enforcement officer of the agency for a warrant, or extension, variation or revocation of a warrant, was granted, refused or withdrawn.**

*Inspection 11 December 2013:* NT Police complied with this provision.

**8.2 – Section 61(b) The Chief Officer of a law enforcement agency must keep a statement as to whether each application made by a law enforcement officer of the agency for an emergency authorisation, or for approval of powers exercised under an emergency authorisation, was granted, refused or withdrawn.**

*Inspection 11 December 2013:* No emergency authorisations were sought during this reporting period.

**8.3 – Section 61(c) The Chief Officer of a law enforcement agency must keep details of each use by the agency, or by a law enforcement officer of the agency, of information obtained by the use of a surveillance device by a law enforcement officer of the agency.**

*Inspection 11 December 2013:* NT Police complied with this provision.

**8.4 – Section 61(d) The Chief Officer of a law enforcement agency must keep details of each communication by a law enforcement officer of the agency to a person other than a law enforcement officer of the agency of information obtained by the use of a surveillance device by a law enforcement officer of the agency.**

*Inspection 11 December 2013:* NT Police advise that no communication occurred.

**8.5 – Section 61(e) The Chief Officer of a law enforcement agency must keep details of each occasion when, to the knowledge of a law enforcement officer of the agency, information obtained by the use of a surveillance device by a law enforcement officer of the agency was given in evidence in a relevant proceeding.**

*Inspection 11 December 2013:* Administration records show that NT Police has in place a mechanism to comply with this requirement but no individual records examined during this inspection indicated that information obtained by the use of a surveillance device was given in evidence.

**8.6 – Section 61(f) The Chief Officer of a law enforcement agency must keep details of the destruction of records or reports under Section 55(1) (b).**

*Inspection 11 December 2013:* NT Police advise that no records were destroyed relating to the records inspected.

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

*Inspection 11 December 2013:* NT Police keeps a Register of Warrants and Emergency Authorisations. No emergency authorisations were sought or granted during the period covered by this inspection.

**8.8 – Section 62(2) The Register must, for each warrant issued, state the date of issue; the name of the Judge/Magistrate who issued it; the name of the LEO primarily responsible for executing it; the offence for which it was issued; the period during which it is in force; details of any extension or variation of it.**

*Inspection 11 December 2013:* NT Police complied with this provision.

**8.9 – Section 62(3) The Register must, for each emergency authorisation, state the date it was given; the name of the senior officer who gave it; the name of the law enforcement officer to whom it was given; the offence for which it was given and the date on which the application for approval of powers exercised under it was made.**

*Inspection 11 December 2013:* There were no emergency authorisations issued during this reporting period.

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