



Office of the Inspector of the  
**Law Enforcement Conduct Commission**

**Report under Section 49(1) of the  
*Surveillance Devices Act 2007*  
For the period ending  
30 June 2018**

**August 2018**



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## **Chapter 1. Introduction**

The *Surveillance Devices Act 2007* (NSW) (the Act) provides for the use of surveillance devices to investigate crime and to enable evidence to be obtained of the commission of such crime as well as the identity and/or the whereabouts of potential suspects. The Act covers the installation, use and maintenance of listening, optical, tracking, and data surveillance devices. It also places restrictions upon the communication and publication of private conversations, surveillance activities and other information obtained from the use of such devices.

Reporting and record keeping obligations are imposed on the law enforcement agencies authorised to use surveillance devices as are provisions for the safe keeping and destruction of information obtained from the use of such devices. There is also an important inspection obligation.

### **1.1. Legislative Changes**

There were no legislative changes during the reporting period.

### **1.2 Reporting requirements**

Since 1 July 2017 the responsibility for inspections has been conferred upon the Inspector of the Law Enforcement Conduct Commission (LECC).

Amendments to the LECC Act which came into effect on 25 September 2017 enabled the Inspector to delegate those functions to nominated members of staff. Appropriate delegations are now in existence.

The four law enforcement agencies which were the subject of inspections for the reporting period are:

- NSW Police Force
- NSW Crime Commission
- Independent Commission Against Corruption
- Law Enforcement Conduct Commission

The Inspector is required by section 49(1) of the Act to report to the Minister at six monthly intervals on the results 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 submitted to the Minister in accordance with section 49 of the Act. The report details the results of inspections conducted of agency records covering the period from 1 January 2018 to 30 June 2018 (the reporting period).

### 1.3 Scope of the inspections

The aim of the Act 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 Inspector 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 for this reporting period was to examine the records of each agency to determine if there had been compliance with those record and document keeping requirements. At the same time the focus was upon such other aspects of compliance as could be determined from those records as well as what could be gleaned from asking questions of relevant officers.

Inspections focussed upon the extent of compliance with the following parts of the Act:

- Part 3 which deals with warrants and emergency authorisations
- Part 5 which covers compliance and monitoring, including dealing with records obtained by use of surveillance devices, the use, communication or publication of protected information, reporting and record keeping
- Part 6 which requires notification to the Attorney General about warrants sought, as well as notification to the subject of surveillance if so 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 which authorises the use of a tracking device only, or for a retrieval warrant in respect of a tracking device. Applications must include certain information and must be accompanied by an affidavit setting out the grounds for seeking the warrant. While the inspections of records included an examination of the matters required to be specified, they did not examine the sufficiency or otherwise of the information provided in support of the application as that is the function of the relevant judicial officer.

All surveillance device warrant files at each agency were inspected. The inspection included examining the application, the warrant itself, the required notice to the Attorney General under section 51 of the Act, as well as the subsequent report to the issuing judicial officer and the Attorney General required under section 44 of the Act, and any other information which was contained on the file.

The inspection involved checking that:

- the application was made to an eligible Judge or, in appropriate cases, to an eligible Magistrate
- the application included the name of the applicant and the nature and duration of the warrant including the kind of device which was sought and that the application was supported by an affidavit
- the warrant contained the information required by section 20 of the Act
- any extension or variation to the warrant complied with section 22 of the Act
- the revocation of a warrant complied with section 23 of the Act
- the appropriate law enforcement officer had notified the chief officer immediately when they were satisfied that the use of the warrant was no longer necessary, and that the chief officer had taken steps to discontinue the use of the device or devices as soon as practicable
- where a warrant was revoked, that the use of the device was discontinued immediately
- the section 51 notice contained the required information and had been provided to the Attorney General before the warrant was issued, and that the Attorney General had been given an opportunity to be heard on the application
- the subsequent report under section 44 of the Act had been provided to the eligible judge and the Attorney General within the time specified in the warrant
- the report complied with the requirements of section 41 of the Act
- the application for continued use of an authorised surveillance device in an emergency situation complied with sections 31 and 32 of the Act
- where a surveillance device was used without a warrant, that an application for approval had been made within two business days to an eligible judge and that such approval had complied with section 33 of the Act
- the register of warrants and emergency applications contained the information required by section 47 of the Act
- that any directions under section 52 of the Act had been complied with.

Records relating to the use of protected information obtained by the use of surveillance devices, and the security of those records, were also inspected.

## Chapter 2. Overview of records inspected

Inspections were conducted during the reporting period in respect of all 4 NSW law enforcement agencies over a period which in total amounted to 22 days. The following tables set out the details of those inspections.

**Table 1: Surveillance device warrants issued**

	No. of warrants issued
NSW Police Force	456
NSW Crime Commission	50
Independent Commission Against Corruption	3
Law Enforcement Conduct Commission	1
<b>Total</b>	<b>510</b>



**Table 2: Surveillance device warrants revoked**

	No. of warrants revoked
NSW Police Force	88
NSW Crime Commission	13
Independent Commission Against Corruption	0
Law Enforcement Conduct Commission	1
<b>Total</b>	<b>102</b>

**Table 3: Emergency use of surveillance devices**

	No. of emergency uses of surveillance devices
NSW Police Force	2
NSW Crime Commission	0
Independent Commission Against Corruption	0
Law Enforcement Conduct Commission	0
<b>Total</b>	<b>2</b>

**Table 4: Retrieval warrants issued**

	No. of retrieval warrants issued
NSW Police Force	3
NSW Crime Commission	0
Independent Commission Against Corruption	0
Law Enforcement Conduct Commission	0
<b>Total</b>	<b>3</b>

**Table 5: Surveillance device warrant reports received**

	No. of warrant reports received
NSW Police Force	318
NSW Crime Commission	44
Independent Commission Against Corruption	2
Law Enforcement Conduct Commission	1
<b>Total</b>	<b>365</b>

## **Chapter 3. NSW Police Force**

As the majority of records are located at Police Prosecutions, Covert Applications Unit (CAU) most of the inspections were conducted at those premises.

### **3.1. Warrants general requirements**

#### **3.1.1. Section 17 Application for a surveillance device warrant**

469 applications for surveillance device warrants were made during the reporting period, of which 456 were issued and 13 refused. All such applications were made to eligible Judges. No applications were made to an eligible Magistrate for a warrant authorising the use of a tracking device only.

#### **3.1.2. Section 18 Remote Application**

5 such applications were made during the reporting period.

All such applications were notified to the Attorney General. All supporting affidavits were provided to the issuing judicial officer within the time frame required by the legislation.

#### **3.1.3. Section 22 Extension and variation of surveillance device warrant**

17 extensions and 1 variation were issued during the reporting period. Of the 17 extensions issued, 9 related to warrants granted during previous reporting periods. 1 of those 9 warrants was also varied.

#### **3.1.4. Section 23 Revocation of surveillance device warrant**

88 such warrants were revoked during the reporting period, all of which were revoked by an eligible Judge.

#### **3.1.5. Section 24 Discontinuance of use of surveillance device under warrant**

Section 24(2)(a) 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. The NSW Police Force uses a Notification of Discontinuation form to record such action. All warrants which had been used were discontinued as soon as practicable.

Section 24(2)(b) requires that when an application for discontinuation is made, an application must also be made for the revocation of the warrant under section 23, although there is no time limit specified for making the latter application. Inspections revealed that in each instance where the use of the device had been discontinued, an application for revocation of the warrant had been made and also that the warrant had been revoked.

**3.1.6. Section 25 Application for retrieval warrant**

Three such applications were made during the reporting period all of which were issued.

**3.1.7. Section 26 Remote application for retrieval warrant**

No such applications were made during the reporting period.

**3.1.8. Section 30 Revocation of retrieval warrant**

No revocations of such warrants were made during the reporting period.

**3.2. Emergency authorisation requirements**

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

Two such uses were made during the reporting period.

**3.2.2. Section 32 Emergency authorisation - continued use of surveillance devices in participating jurisdiction**

No such authorisation was made during the reporting period.

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

Two such applications were made during the reporting period, both of which were approved.

**3.3. Protected information**

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

The NSW Police Force has adopted a practice whereby a 'Protected Information' register is provided to each law enforcement officer to whom a warrant is issued. The use and

communication of protected information is recorded on that register. Also recorded are the details of the destruction of any protected information which is no longer required for the purposes set out in sub-sections (4), (4A) or (5).

Given the diversity of locations of those registers it was not possible to conduct any such inspections during the reporting period.

### **3.4. Record-Keeping and Reporting**

#### **3.4.1. Section 41 Dealing with records obtained by use of surveillance devices**

Section 41 requires that the chief officer of the law enforcement agency ensure that every record or report obtained by the use of a surveillance device is kept, in accordance with guidelines established by the chief officer, in a secure place that is not accessible to people who are not entitled to deal with the record or report. That officer must also destroy or cause to be destroyed any such record or report if satisfied that it is not likely to be required in connection with a purpose referred to in section 40 (4) or (5).

NSW Police Force has established guidelines for dealing with protected information and its destruction. In relation to records maintained by the CAU, those records are kept in a secure location which can only be accessed by staff of the CAU. Inspections conducted at the CAU revealed that the statutory requirements had been complied with.

NSW Police Force has developed a practice whereby a Surveillance Device register is created in each command that records details of each warrant, the law enforcement officer responsible for that warrant and where that officer is located. Also recorded are the details of the destruction of protected information which is no longer required for the purposes set out in section 40 (4) or (5).

Given the diversity of locations of those registers it was not possible to conduct inspections of them during the reporting period.

#### **3.4.2. Section 44 Reports to eligible Judge or eligible Magistrate and Attorney General**

Inspections revealed that there were 49 occasions on which the section 44 report was presented to the eligible Judge and Attorney General outside the 60 day period specified in the warrant. However, all but one of those reports which had been delayed related to warrants issued in previous reporting periods.

### **3.4.3. 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. That register is maintained at CAU. The register is also required to contain certain specified information. Inspections revealed that the register recorded all of the required information.

## **3.5. Evidentiary Certificates**

### **3.5.1. Section 50 Provision for the issue of evidentiary certificates**

Inspections revealed that there were no evidentiary certificates issued during the reporting period.

## **3.6. Notifications to the Attorney General**

### **3.6.1. Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney General**

Inspections revealed that the NSW Police Force was generally compliant with this requirement. However, there were a small number of instances in which the file did not have a hardcopy version of the section 51 notice or the notice did not contain all the relevant particulars or it contained minor typographical errors. When these instances were drawn to the attention of the relevant staff at CAU, these deficiencies were rectified.

### **3.6.2. Section 52 Requirement to inform subject of surveillance**

No such orders were made during the reporting period.

## **3.7. Concluding Comments**

NSWPF Covert Applications Unit has continued to address the issue of delayed reports. As a result only one report was delayed for warrants issued during the current reporting period.

## **3.8. Recommendations**

No specific recommendations are made

## **Chapter 4. NSW Crime Commission**

### **4.1. Warrants general requirements**

#### **4.1.1. Section 17 Application for a surveillance device warrant**

50 applications for surveillance device warrants were made during the reporting period, all of which were issued. All such applications were made to eligible Judges. No applications were made to an eligible Magistrate for a warrant authorising the use of a tracking device only.

#### **4.1.2. Section 18 Remote Application**

No such applications were made during the reporting period.

#### **4.1.3. Section 22 Extension and variation of surveillance device warrant**

59 extensions were issued during the reporting period. Of the 59 extensions issued, 50 related to warrants granted during previous reporting periods. 4 of those 50 warrants were also varied.

#### **4.1.4. Section 23 Revocation of surveillance device warrant**

13 such warrants were revoked during the reporting period, all of which were revoked by an eligible Judge.

#### **4.1.5. Section 24 Discontinuance of use of surveillance device under warrant**

Section 24(2)(a) 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. All warrants which had been used were discontinued as soon as practicable.

Section 24(2)(b) requires that when an application for discontinuation is made, an application must also be made for the revocation of the warrant under section 23, although there is no time limit specified for making the latter application. Inspections revealed that in each instance where the use of the device had been discontinued, an application for revocation of the warrant had been made and also that the warrant had been revoked.

#### **4.1.6. Section 25 Application for retrieval warrant**

No such applications were made during the reporting period.

**4.1.7. Section 26 Remote application for retrieval warrant**

No such applications were made during the reporting period.

**4.1.8. Section 30 Revocation of retrieval warrant**

No revocations of such warrants were made during the reporting period.

**4.2. Emergency authorisation requirements**

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

No such use was made during the reporting period.

**4.2.2. Section 32 Emergency authorisation - continued use of surveillance devices in participating jurisdiction**

No such authorisation was made during the reporting period.

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

No such applications were made during the reporting period.

**4.3. Protected Information**

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

The law enforcement officers responsible for each warrant at the NSW Crime Commission (NSWCC) are also NSW police officers and accordingly they follow the NSW Police Force practice. The NSW Police Force has adopted a practice whereby a 'Protected Information' register is provided to each law enforcement officer who is issued with a warrant. The use and communication of protected information is recorded on that register. Also recorded are the details of the destruction of any protected information which is no longer required for the purposes set out in sub-sections (4), (4A) or (5).

Given competing priorities it was not possible to conduct any such inspections during the reporting period.



#### **4.4. Record-Keeping and Reporting**

##### **4.4.1. Section 41 Dealing with records obtained by use of surveillance devices**

Section 41 requires that the chief officer of the law enforcement agency ensure that every record or report obtained by the use of a surveillance device is kept, in accordance with guidelines established by the chief officer, in a secure place that is not accessible to people who are not entitled to deal with the record or report. That officer must also destroy or cause to be destroyed any such record or report if satisfied that it is not likely to be required in connection with a purpose referred to in section 40 (4) or (5).

NSWCC has established guidelines for dealing with protected information. Protected information is securely stored at the NSWCC premises with access restricted to authorised officers.

Inspections revealed that the statutory requirements had been complied with. However, the NSWCC is still in the process of establishing guidelines for dealing with the destruction of protected information.

##### **4.4.2. Section 44 Reports to eligible Judge or eligible Magistrate and Attorney General**

Inspections revealed that all such reports were provided within the timeframe specified in the warrant and that each also contained all of the required information.

##### **4.4.3. 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. That register is also required to contain certain specified information.

Inspections revealed that the register recorded all of the required information.

#### **4.5. Evidentiary Certificates**

##### **4.5.1. Section 50 Provision for the issue of evidentiary certificates**

Inspections revealed that there were no evidentiary certificates issued during the reporting period.

#### **4.6. Notifications to the Attorney General**

##### **4.6.1. Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney General**

Inspections revealed that each of the section 51 notices contained all of the required information.

##### **4.6.2. Section 52 Requirement to inform subject of surveillance**

No such orders were made during the reporting period.

#### **4.7. Concluding Comments**

NSWCC complied with its obligations under the Act during the reporting period.

#### **4.8. Recommendations**

No specific recommendations are made.

## **Chapter 5. Independent Commission Against Corruption**

### **5.1. Warrants general requirements**

#### **5.1.1. Section 17 Application for a surveillance device warrant**

3 applications for surveillance device warrants were made during the reporting period, all of which were issued. All such applications were made to eligible Judges. No applications were made to an eligible Magistrate for a warrant authorising the use of a tracking device only.

#### **5.1.2. Section 18 Remote Application**

No such applications were made during the reporting period.

#### **5.1.3. Section 22 Extension and variation of surveillance device warrant**

No extensions or variations were sought during the reporting period.

#### **5.1.4. Section 23 Revocation of surveillance device warrant**

There were no such revocations during the reporting period.

#### **5.1.5. Section 24 Discontinuance of use of surveillance device under warrant**

Section 24(2)(a) 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.

Section 24(2)(b) requires that when an application for discontinuance is made, an application must also be made for the revocation of the warrant under section 23, although there is no time limit specified for making the latter application.

There was no occasion for such a discontinuance during the reporting period.

#### **5.1.6. Section 25 Application for retrieval warrant**

No such applications were made during the reporting period.

#### **5.1.7. Section 26 Remote application for retrieval warrant**

No such applications were made during the reporting period.

**5.1.8. Section 30 Revocation of retrieval warrant**

No revocations of such warrants were made during the reporting period.

**5.2. Emergency authorisation requirements**

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

No such use was made during the reporting period.

**5.2.2. Section 32 Emergency authorisation - continued use of surveillance devices in participating jurisdiction**

No such authorisation was made during the reporting period.

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

No such applications were made during the reporting period.

**5.3. Protected Information**

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

The use of protected information is simply recorded on the warrant file. Inspections revealed that the statutory requirements had been complied with.

**5.4. Record-Keeping and Reporting**

**5.4.1. Section 41 Dealing with records obtained by use of surveillance devices**

Section 41 requires that the chief officer of the law enforcement agency ensure that every record or report obtained by the use of a surveillance device is kept, in accordance with guidelines established by the chief officer, in a secure place that is not accessible to people who are not entitled to deal with the record or report. That officer must also destroy or cause to be destroyed any such record or report if satisfied that it is not likely to be required in connection with a purpose referred to in section 40 (4) or (5).

ICAC has established guidelines for dealing with protected information and its destruction. Protected information is securely stored at the ICAC premises with access restricted to

authorised officers. Inspections revealed that the statutory requirements had been complied with.

#### **5.4.2. Section 44 Reports to eligible Judge or eligible Magistrate and Attorney General**

Inspections revealed that all such reports were provided within the timeframe specified in the warrant and that each also contained all of the required information.

#### **5.4.3. 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. That register is also required to contain certain specified information.

Inspections revealed that the register recorded all of the required information.

### **5.5. Evidentiary Certificates**

#### **5.5.1. Section 50 Provision for the issue of evidentiary certificates**

Inspections revealed that there were no evidentiary certificates issued during the reporting period.

### **5.6. Notifications to the Attorney General**

#### **5.6.1. Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney General**

Inspections revealed that each of the section 51 notices contained all of the required information.

#### **5.6.2. Section 52 Requirement to inform subject of surveillance**

No such orders were made during the reporting period.

### **5.7. Concluding Comments**

ICAC complied with its obligations under the Act during the reporting period.

### **5.8. Recommendations**

No specific recommendations are made.

## **Chapter 6. Law Enforcement Conduct Commission**

### **6.1. Warrants general requirements**

#### **6.1.1. Section 17 Application for a surveillance device warrant**

1 application for a surveillance device warrant was made and issued during the reporting period. It was made to an eligible Judge. No applications were made to an eligible Magistrate for a warrant authorising the use of a tracking device only.

#### **6.1.2. Section 18 Remote Application**

No such applications were made during the reporting period.

#### **6.1.3. Section 22 Extension and variation of surveillance device warrant**

No extensions or variations were sought during the reporting period.

#### **6.1.4. Section 23 Revocation of surveillance device warrant**

One such warrant was revoked during the reporting period. It was revoked by an eligible Judge.

#### **6.1.5. Section 24 Discontinuance of use of surveillance device under warrant**

Section 24(2)(a) 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.

Section 24(2)(b) requires that when an application for discontinuation is made, an application must also be made for the revocation of the warrant under section 23, although there is no time limit specified for making the latter application.

There was no occasion for such a discontinuance during the reporting period.

#### **6.1.6. Section 25 Application for retrieval warrant**

No such applications were made during the reporting period.

#### **6.1.7. Section 26 Remote application for retrieval warrant**

No such applications were made during the reporting period.

**6.1.8. Section 30 Revocation of retrieval warrant**

No revocations of such warrants were made during the reporting period.

**6.2. Emergency authorisation requirements**

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

No such use was made during the reporting period.

**6.2.2. Section 32 Emergency authorisation - continued use of surveillance devices in participating jurisdiction**

No such authorisation was made during the reporting period.

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

No such applications were made during the reporting period.

**6.3. Protected Information**

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

The use of protected information is simply recorded on the warrant file. Inspections revealed that no protected information was recorded on that file.

**6.4. Record-Keeping and Reporting**

**6.4.1. Section 41 Dealing with records obtained by use of surveillance devices**

Section 41 requires that the chief officer of the law enforcement agency ensure that every record or report obtained by the use of a surveillance device is kept, in accordance with guidelines established by the chief officer, in a secure place that is not accessible to people who are not entitled to deal with the record or report. That officer must also destroy or cause to be destroyed any such record or report if satisfied that it is not likely to be required in connection with a purpose referred to in section 40 (4) or (5).

LECC has established guidelines for dealing with protected information and its destruction. Those guidelines are designed to ensure that protected information will in due course be

securely stored at the LECC premises with access restricted to authorised officers. Inspections revealed that the statutory requirements had otherwise been complied with.

#### **6.4.2. Section 44 Reports to eligible Judge or eligible Magistrate and Attorney General**

Inspections revealed that the report was provided within the timeframe specified in the warrant and that it also contained all of the required information.

#### **6.4.3. 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. That register is also required to contain certain specified information.

Inspections revealed that the register recorded all of the required information.

### **6.5. Evidentiary Certificates**

#### **6.5.1. Section 50 Provision for the issue of evidentiary certificates**

Inspections revealed that there were no evidentiary certificates issued during the reporting period.

### **6.6. Notifications to the Attorney General**

#### **6.6.1. Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney General**

Inspections revealed that the section 51 notice contained all of the required information.

#### **6.6.2. Section 52 Requirement to inform subject of surveillance**

No such orders were made during the reporting period.

### **6.7. Concluding Comments**

LECC complied with its obligations under the Act during the reporting period.

### **6.8. Recommendations**

No specific recommendations are made.