

Office of the Inspector of the Law Enforcement Conduct Commission

Surveillance Devices Report for the period ending 30 June 2024

Section 49(1) of the *Surveillance Devices Act 2007*

September 2024



OFFICIAL

Acknowledgement of Country

The Office of the Inspector of the Law Enforcement Conduct Commission acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and emerging and acknowledge the Aboriginal and Torres Strait Islander people.

Surveillance Devices Report for the period ending 30 June 2024.

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Chapter 1. Introduction

In accordance with regulatory obligations, this report summarizes the activities and outcomes related to surveillance devices used during the reporting period ending 30 June 2024. Its purpose is to enhance transparency and accountability concerning surveillance device warrants and their impact under the *Surveillance Devices Act 2007*.

1.1 What are the objects of the *Surveillance Devices Act 2007*?

The Surveillance Devices Act 2007 (NSW) (hereafter referred to as "the Act") establishes the legal framework governing the use of surveillance devices for the investigation of criminal activities.

The objects of the Act are as follows —

- a. to provide law enforcement agencies with a comprehensive framework for the use of surveillance devices in criminal investigations,
- b. to enable law enforcement agencies to covertly gather evidence for the purposes of criminal prosecutions, and
- c. to ensure that the privacy of individuals is not unnecessarily impinged upon by providing strict requirements around the installation, use and maintenance of surveillance devices.

The Act imposes reporting and record-keeping obligations on authorised law enforcement agencies which use surveillance devices. It also establishes mechanisms for the secure storage, and systematic destruction, of information obtained by such devices. These measures collectively contribute to the Act's comprehensive framework for the lawful and responsible use of surveillance technology.

1.2 What are the different kinds of surveillance devices covered by the Act?

- listening devices (s. 7(1))
- optical surveillance devices (s. 8(1))
- tracking devices (s. 9(1))
- data surveillance devices (s.10(1))

A listening device is any device capable of being used to overhear, record, monitor or listen to a conversation or words spoken to or by any person in conversation, but does not include a hearing aid or similar device used by a person with impaired hearing to overcome the impairment and permit that person to hear only sounds ordinarily audible to the human ear.

An optical surveillance device is any device capable of being used to record visually or observe an activity, but does not include spectacles, contact lenses or a similar device used by a person with impaired sight to overcome that impairment.

A tracking device is any electronic device capable of being used to determine or monitor the geographical location of a person or an object.

A data surveillance device is any device or program capable of being used to record or monitor the input of information into or output of information from a computer but does not include an optical surveillance device.

1.3 When can surveillance devices be used?

Speaking generally, the Act operates by prohibiting the use of surveillance devices and imposing criminal sanctions on such use, subject to exceptions specified in the Act. Section 7(2) – (5) of the Act sets out the exceptions to the prohibitions on the use of surveillance devices.

There are too many exceptions to list them all in this report. However, relevant to this report are the exceptions set out in the Act which allow the installation, use or maintenance of surveillance devices listed above, by law enforcement agencies, on issuance of the following:

- a warrant,
- emergency authorisation, or
- corresponding warrant, or
- corresponding emergency authorisation.

1.4 Warrants

In the context of the Act, a warrant is a legal document issued by a judicial officer authorising a law enforcement authority to take some action relating to the administration of justice.

There are two types of warrants that may be issued under the Act, namely a surveillance device warrant and a retrieval warrant – section 15.

Section 17 of the Act enables a ‘law enforcement officer’ to apply for the issue of a surveillance device warrant. The terms ‘law enforcement officer’ and ‘law enforcement agency’ are defined in the definitions section of the Act (s. 4).

Surveillance device and retrieval warrants can only be issued by an eligible Judge of the Supreme Court or an eligible Magistrate. To be eligible, a Judge or Magistrate must have been declared as such, by instrument in writing, by the Attorney General of New South Wales (‘the Attorney General’) to be able to issue such a warrant.

Eligible Judges can issue surveillance device warrants and retrieval warrants for all surveillance devices covered by the Act. **Eligible Magistrates** may issue surveillance device warrants and retrieval warrants for the use of tracking devices only.

1.4.1 Applying for the issue of a surveillance device warrant (Part 3 – Division 2)

Section 17 of the Act outlines the application process for law enforcement agencies to apply for a surveillance device warrant.

As s. 17(1) of the Act states, a law enforcement officer, must, on reasonable grounds suspect or believe that –

- a. a relevant offence has been, is being, is about to be or is likely to be committed,
- b. an investigation into that offence is being, will be or is likely to be conducted in this jurisdiction or in this jurisdiction and in one or more participating jurisdictions, and
- c. the use of a surveillance device is necessary for the purpose of an investigation into that offence to enable evidence to be obtained of the commission of that offence or the identity or location of the offender.

Applications for warrants must be made in the form of an affidavit. An affidavit is a written statement whose contents are sworn or affirmed to be true.

Section 17(1A) of the Act provides for the issue of a surveillance device warrant for the purpose of an investigation into whether an application for a supervision or detention order under the *Terrorism (High Risk Offenders) Act 2017* should be made.

Section 17(3) of the Act describes the information which must be included in an affidavit in support of an application for a surveillance device. An eligible Judge or eligible Magistrate can, in exceptional circumstances, issue a warrant without an affidavit, although the Act requires an affidavit to be provided not later than 72 hours following the making of the application¹.

1.4.2 Prior notice to the Attorney General

The Attorney General has an opportunity to be heard in relation to the granting of a surveillance device warrant.

Prior to making the application for a warrant to an eligible Judge or eligible Magistrate, s. 17(5A) of the Act requires a notice of the intended application to be served on the Attorney General. Such notices are presently sent to the Surveillance Devices Commissioner (NSW), who is the Attorney-General's delegate for such purposes. This gives the Surveillance Devices Commissioner the opportunity to comment on the application and raise with the law enforcement agency and/or the eligible Judge or eligible Magistrate, any matters of concern, or for consideration.

1.4.3 Determination of an application for a warrant

An application for a surveillance device warrant is not heard in open court, but rather determined by the eligible Judge or eligible Magistrate in their Chambers, i.e., their work office.

Section 18(1) of the Act makes provision for remote warrants to be issued in certain circumstances. They may be applied for by telephone, email, or any other means of communication.

Section 19 sets out the matters to be considered in determining an application for a surveillance device warrant. The eligible Judge or eligible Magistrate must have regard to —

- a. for an application under s. 17(1) — the nature and gravity of the alleged offence in respect of which the warrant is sought, and
- b. the extent to which the privacy of any person is likely to be affected, and
- c. the existence of any alternative means of obtaining the evidence or information sought to be obtained and the extent to which those means may assist or prejudice the investigation, and
- d. the extent to which the information sought to be obtained would assist the investigation, and
- e. the evidentiary value of any information sought to be obtained, and
- f. for an application under s. 17(1) — any previous warrant sought or issued under this Part or a corresponding law (if known) in connection with the same offence, and
- g. for an application under s. 17(1A) — any previous warrant sought or issued under this Part or a corresponding law in connection with the same inmate.

The details which must be contained in a warrant are set out in s. 21 of the Act as are the uses which may be made of a warrant.

1.4.4 How long does a surveillance device warrant last?

Surveillance Device Warrants are to be in force for the time specified on the warrant, initially a period not exceeding 90 days.

¹ Section 17(4) of the Act.

However, the eligible Judge or Magistrate who issued the warrant, may extend it for a period not exceeding 90 days from the day on which it would otherwise expire. The Judge or Magistrate may also vary any other terms of the warrant.

Section 23 of the Act enables the eligible Judge or eligible Magistrate who issued the warrant to revoke the warrant ‘at any time before the expiration of the period of validity specified in it’ on ‘application by or on behalf of a law enforcement officer.’

The Act also describes circumstances for the discontinuance of the use of a warrant. In summary, as soon as practicable, after the law enforcement officer to whom the warrant is issued, or who is primarily responsible for executing the warrant, is satisfied that the use of the device is no longer necessary.

1.4.5 Retrieval warrants (Part 3 – Division 3)

A surveillance device may be retrieved under the original surveillance device warrant within 10 days after the expiry date of the warrant. After that time, a retrieval warrant is required to retrieve a surveillance device.

Sections 25(2) to (5) of the Act set out the conditions under which an application for a retrieval warrant may be made and what the application must contain. There is a requirement under s. 25(5A) to serve a notice of any application for a retrieval warrant on the Attorney-General. Presently, these notices are sent to the Surveillance Devices Commissioner, the Attorney General’s delegate.

The determination requirements for a retrieval warrant, the contents of the warrant, powers provided and reporting provisions with respect thereto are contained in sections 26 to 30 of the Act. They substantially replicate the corresponding sections for surveillance device warrants above (although the information required simply relates to the retrieval of the device or devices).

1.5 Emergency authorisations (Part 3 – Division 4)

The Act provides for the use of a surveillance device by a law enforcement officer without a warrant, in an emergency. Pursuant to the Act, emergency authorisations, that is, retrospective approval from an eligible Judge, for the use of a surveillance device, can be granted if a law enforcement officer, on reasonable grounds, suspects or believes that -

- a. an imminent threat of serious violence to a person or substantial damage to property or that a serious narcotics offence will be committed exists, and
- b. the use of a surveillance device is immediately necessary for the purpose of dealing with that threat, and
- c. the circumstances are so serious, and the matter is of such urgency that the use of a surveillance device is warranted, and
- d. it is not practicable in the circumstances to apply for a surveillance device warrant.

Within 2 business days after a law enforcement officer uses a surveillance device without a warrant, in an emergency under s. 31 of the Act, the law enforcement officer (or another person on his or her behalf) must apply to an eligible Judge for approval of the exercise of powers under that section.

Sections 34 and 35 of the Act identify the matters which the eligible Judge is to consider before approving such an application.

If the eligible Judge does not approve an application for an emergency authorisation, the Judge may —

- a. order that the use of the surveillance device cease, and
- b. authorise, subject to any conditions the eligible Judge thinks fit, the retrieval of the surveillance device.

The eligible Judge may also order that any information obtained from or relating to the exercise of powers without a warrant or under the emergency authorisation, or any record of that information, be dealt with in a way specified in an order.

1.6 Warrants and Corresponding authorisations

Sections 37 and 38 of the Act address the use of surveillance devices across borders.

1.6.1 Can a surveillance device warrant or emergency authorisation issued in another State or Territory of Australia be used in NSW?

Clause 3 of the *Surveillance Devices Regulation 2014* (NSW) (the Regulation) declares that the following laws of other jurisdictions are corresponding laws for the purposes of the definition of corresponding law in s. 4(1) of the Act:

- a. the *Surveillance Devices Act 2007* of the Northern Territory,
- b. the *Police Powers and Responsibilities Act 2000* of Queensland, Chapter 13,
- c. the *Police Powers (Surveillance Devices) Act 2006* of Tasmania,
- d. the *Surveillance Devices Act 1999* of Victoria,
- e. the *Crimes (Surveillance Devices) Act 2010* of the Australian Capital Territory.

1.6.2 Can a surveillance device warrant or emergency authorisation issued in NSW be used in another State or Territory of Australia?

Surveillance device warrants and authorisations issued in NSW are recognised by other jurisdictions so long as they constitute a 'participating jurisdiction' within the meaning of s. 4 of the Act.

At present, the following jurisdictions are participating jurisdictions:

- a. the Australian Capital Territory (see the *Crimes (Surveillance Devices) Regulation 2017* (ACT), Regulation 3)
- b. the Northern Territory (see the *Surveillance Devices Regulations 2008* (NT), Regulation 2)
- c. Queensland (see the *Police Powers and Responsibilities Regulation 2012* (Qld), Part 3 in Schedule 4)
- d. South Australia (see the *Surveillance Devices Regulations 2017* (SA), Regulation 10).
- e. Tasmania (see the *Police Powers (Surveillance Devices) (Corresponding Laws) Regulations 2011* (Tas), regulation 3)
- f. Victoria (see the *Surveillance Devices Regulations 2016* (Vic), regulation 6)

Note - Western Australia does not recognise warrants or authorisations from NSW.

1.7 Compliance and monitoring

1.7.1 Restrictions upon the use, communication, and publication of protected information

As the use of a surveillance device involves an intrusion on a person or persons' privacy, the Act contains restrictions on the use, communication, and publication of protected information.

'Protected information' is defined in s. 39 as being:

- a. any information obtained from the use of a surveillance device under a warrant, emergency authorisation, corresponding warrant, or corresponding emergency authorisation, or

b. any information relating to —

- i. an application for, issue of, existence or expiry of, a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation, or*
- ii. an application for approval of powers exercised in an emergency without a warrant under section 31 or under an emergency authorisation, or*
- iii. an application under a corresponding law for approval of powers exercised under a corresponding emergency authorisation, or*

c. any information obtained from use of a surveillance device as referred to in section 7(4) or 8(2A), or

d. any information obtained from the use, in accordance with section 50A, of body-worn video by a police officer.

Sections 40(1) and (2) prohibit the use, communication, and publication of protected information, unless it is a matter to which the various exceptions in subsection (3) applies. For example, protected information can be used if it has been previously disclosed in an open court or already is in the public domain.

Section 40(4) also provides that protected information may be used, published, or communicated if it is necessary to do so for any of the purposes which are listed there.

The chief officer of a law enforcement agency must ensure that every record or report obtained by the use of a surveillance device by a law enforcement officer of the agency under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation or without a warrant in an emergency or as referred to in s. 7(4) or s. 8(2A), 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.

Furthermore, there is also an obligation on the chief officer of a law enforcement agency to destroy or cause to be destroyed any record or report referred to above if he or she is satisfied that it is not likely to be required in connection with a purpose referred to in s. 40(4) or s. 40(5) of the Act.

1.7.2 Reporting and record keeping (Part 5 – Division 2)

The Act provides for persons who are issued with a surveillance device warrant, or emergency authorisation, or retrieval warrant to furnish a report, in writing, to an eligible Judge (if the warrant or authorisation was issued by an eligible Judge) or eligible Magistrate (if the warrant or authorisation was issued by an eligible Magistrate) and to the Attorney General about the use of the warrant.

The reports are required to be provided within the time specified in the warrant or authorisation (usually within 60 days after a warrant or emergency authorisation expires).

The Act sets out, in detail, the information which must be included in the reports as follows:

Section 44(1) – surveillance device warrants

Section 44(2) – emergency authorisations

Section 44(6) – retrieval warrants

The Act provides for penalties, for breaches of ss. 44(1), 44(2) and 44(6) to a maximum term of imprisonment for 12 months.

At present, the reports required to be furnished under the above subsections are being furnished to the Surveillance Devices Commissioner, as the Attorney-General's delegate.

Section 46 of Act provides that certain documents and records connected with warrants and emergency authorisations executed in NSW must be kept by each relevant law enforcement agency. Section 46A makes similar provision for retention of certain documents and records connected with warrants and emergency authorisations executed in participating jurisdictions.

A register of warrants issued, and emergency authorisations granted, is also required to be kept by each law enforcement agency, the details of which are specified in s. 47(2) and s. 47(3) of the Act.

1.8 Evidentiary Certificates

Section 50 of the Act provides for the ability for evidentiary certificates to be issued.

An evidentiary certificate is a written document that allows the law enforcement agency to provide evidence, in connection with the execution of a warrant, or other circumstances specified in s. 50, without the need for a person to appear in Court.

Please note, an evidentiary certificate cannot be issued with respect to an emergency authorisation unless the use of powers under the authorisation concerned has been approved under s. 35 (Eligible Judge may approve emergency use of powers) or under a provision of a corresponding law that corresponds to s. 35.

Section 52 provides the power of an eligible Judge to direct a law enforcement officer, to whom the warrant was issued, to supply to the Judge, within a period specified by the eligible Judge, such information regarding the warrant and the use of the device as the eligible Judge may specify. For more details as to when such a direction may be made, the circumstances involved and penalties which can apply for a breach of the provision, reference should be had to the terms of s. 52 of the Act.

1.9 Legislative changes made during the reporting period.

There were no legislative changes to the Act during the reporting period, 1 January 2024 to 30 June 2024.

1.10 Functions of the Inspector of the Law Enforcement Conduct Commission

1.10.1 Inspection function – s.48

Section 122(1) of the *Law Enforcement Conduct Commission Act 2016* (LECC Act) states that the Inspector of the Law Enforcement Conduct Commission (“the Inspector”) has the functions conferred or imposed on the Inspector by or under that or any other Act.

Section 128A of the LECC Act provides that the Inspector may delegate his functions to members of his staff.

Section 4(1) of the Act defines the term ‘Inspector’ for the purposes of the Act as the Inspector of the Law Enforcement Conduct Commission.

Section 48(1) of the Act provides that:

The Inspector must, from time to time, inspect the records of each law enforcement agency (other than the Australian Crime Commission) to determine the extent of compliance with this Act by the agency and law enforcement officers of the agency.

Note —

Under s. 55 of the *Surveillance Devices Act 2004* of the Commonwealth, the Commonwealth Ombudsman is required to inspect the records of the Australian Crime Commission to determine the extent of the Commission’s compliance with this Act.

Section 48(2) of the Act contains additional provisions that enable the Inspector to access the necessary records for the purpose of an inspection and obtain further information when necessary.

1.10.2 Reporting function – s.49

The Inspector has a reporting function under s. 49 of the Act. According to s. 49, the Inspector is required to provide reports to the Minister every six months detailing the outcomes of inspections carried out at four specified law enforcement agencies. The agencies are:

1. New South Wales Police Force (**NSWPF**)
2. New South Wales Crime Commission (**NSWCC**)
3. New South Wales Law Enforcement Conduct Commission (**LECC**)
4. New South Wales Independent Commission Against Crime (**ICAC**)

Section 49(2) relevantly provides that the Minister must, within 15 days after the receipt of the report, lay the report (or cause it to be laid) before both Houses of Parliament.

This is the report submitted by the Inspector to the Minister in accordance with s. 49 of the Act. It covers the period from 1 January 2024 to 30 June 2024 (the reporting period).

1.11 The Inspection Process and Methodology

The usage of surveillance devices by law enforcement agencies is conditional upon them adhering to prescribed procedural and record-keeping protocols.

The oversight and monitoring of the four agencies, and their adherence to the procedural and record-keeping protocols, are principally conducted by the Inspector and his delegates, the members of the Secure Monitoring Unit (SMU), together known for the purposes of this report as officers of the Office of the Inspector of the Law Enforcement Conduct Commission (OILECC).

OILECC aims to inspect all surveillance device warrant files across each agency. To ensure maximum use of their time, OILECC prefers to examine the files, only once, after the s. 44 reports, describing the use of the relevant devices, have been sent to the Attorney General. Accordingly, the

contents of this Surveillance Devices Report for the period ending 30 June 2024 reflect the details of the warrant files inspected during the inspection period, not the details of all warrants issued during the inspection period.

The allocation of surveillance device warrants across various agencies exhibits notable differences. Predominantly, the NSWPF applies for the largest quantity of surveillance device warrants. In contrast, the NSWCC rarely pursues such warrants independently, as the NSWPF undertakes this responsibility on their behalf. As agencies like the LECC and the ICAC infrequently seek surveillance device warrants, the frequency of inspections relating to NSWPF warrants significantly exceeds that of other agencies.

1.11.1 Inspection of the warrant files

Each inspection undertaken by OILECC requires a thorough review of the hard or electronic copies of the application, the warrant itself, the mandatory notifications to the Surveillance Devices Commissioner (acting as the Attorney-General's delegate), as well as the s. 44 reports submitted to the issuing eligible Judge or eligible Magistrate and, if requested, any other information sought by the Inspector.

During the reporting period, inspections primarily concentrated on assessing compliance with the following segments of the Act:

- Part 3: Pertaining to warrants and emergency authorisations
- Part 5: Encompassing compliance and monitoring aspects, including handling records obtained through surveillance devices, usage, dissemination, or publication of protected information, reporting, and record-keeping
- Part 6: Mandating notification to the Attorney General regarding sought warrants, as well as notification to surveillance subjects if directed by the eligible Judge

The aim of each inspection is to verify compliance with the Act and enhance the agencies' public accountability through reports, such as this one.

The sufficiency of information provided in support of the application for a warrant or emergency authorisation is for the relevant judicial officer to decide, with the assistance and guidance of the Surveillance Devices Commissioner. Inspecting the sufficiency of information is not within the scope of the inspections conducted by OILECC.

1.11.2 Inspection of the registers

The inspections might include the examination of registers maintained pursuant to s. 47. This entails compliance officers reviewing the pertinent register to verify whether it accurately documents the requisite information. Each warrant acquired by the agency necessitates the register to record:

- The issuing date
- The name of the eligible Judge (EJ) who issued the warrant
- The name of the law enforcement officer (LEO) specified in the warrant as the individual primarily responsible for its execution
- The relevant offence
- The duration for which the warrant remains valid
- Details of any variation or extensions

Likewise, for each emergency authorisation granted to a law enforcement officer within the agency, the register should include:

- The date of issuance of the emergency authorisation
- The name of the senior law enforcement officer granting the emergency authorisation
- The name of the law enforcement officer receiving the emergency authorisation

- The relevant offence prompting the emergency authorisation
- The date when the application for approval of powers exercised under the emergency authorisation was submitted.

1.11.3 Operational Command Inspections

Furthermore, beyond these inspection responsibilities, compliance officers of the OILECC routinely undertake what are termed "Operational Command Inspections." An Operational Command Inspection serves as an additional auditing mechanism employed by OILECC compliance officers in conjunction with their overarching oversight functions. As such, it supplements the relevant legislative requirement as to the number or frequency of inspections that are to be conducted.

Such inspections are conducted involving the New South Wales Police Force (NSWPF) due to its significant volume of surveillance device warrants, as well as the decentralized nature of its operations and record-keeping functions across the state.

Operational Command Inspections lead to scrutinising surveillance device warrant records maintained by the NSWPF at various commands, spanning metropolitan and rural areas, which operate independently from the centralized Covert Applications Unit (CAU).

This additional form of inspection is not considered necessary for other agencies since their operations and record-keeping functions are centralized at their respective headquarters.

It is important to note that no Operational Command inspections were feasible during this reporting period due to staffing levels within OILECC. However, given the recent engagement of a further compliance officer, it is anticipated that Operational Command inspections will recommence towards the end of 2024.

1.11.4 Post Inspection Process

The post-inspection process of OILECC involves delegated compliance officers conducting exit interviews with the relevant warrant administration manager. Correspondence then follows between the compliance officers and the manager to address any identified issues.

Following these steps, formal post-inspection correspondence is sent by the Inspector to the relevant agency's chief law enforcement officer, outlining the inspection outcomes and highlighting any areas of concern. In this correspondence, the agencies will be informed, in general terms, as to the information which will be included in the Inspector's report to the Minister.

It is to be noted that OILECC has effectively fostered positive working relationships with all the agencies and units. These collaborative arrangements have significantly assisted in the establishment of best operational models and have also played a key role in ensuring a heightened level of compliance with legislative requirements.

Chapter 2 New South Wales Police Force

Since most records are situated at the CAU, the inspections conducted by OILECC during the reporting period were carried out at the premises of the CAU.

2.1 Warrants- general requirements

2.1.1 Section 17 Application for a surveillance device warrant

During the reporting period, 538 surveillance device warrant applications were inspected, resulting in 524 approvals and 12 refusals. All the applications were submitted to eligible Judges. There were no applications inspected, made to eligible Magistrates, seeking warrants to use a tracking device.

One s. 17(4) warrant was issued. The warrant was sought in urgent circumstances, with the affidavit provided to the Judge, the following day, thus complying with the requirements of s. 17(5)(b).

2.1.2 Section 17(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General's delegate)

Inspections revealed that the NSWPF complied with this requirement.

2.1.3 Section 18 Remote Application

During the reporting period, all applications inspected were submitted remotely.

2.1.4 Section 22 Extension and variation of surveillance device warrant

During the reporting period, applications for 73 extensions and 4 variations were inspected.

2.1.5 Section 23 Revocation of surveillance device warrant

Out of the inspected warrants, 159 were revoked, all by an eligible judge.

2.1.6 Section 24 Discontinuance of use of surveillance device under warrant

The NSWPF records the information that this legislated provision requires in the form of a Notification of Discontinuation. Inspections by OILECC revealed that the NSWPF complied with this requirement with the following exception. An application for revocation had not been sought despite discontinuing the use of one device a month before the warrant's expiry.

2.1.7 Section 25 Application for retrieval warrant

Six applications for a retrieval warrant were inspected during the reporting period, the warrant was granted.

2.1.8 Section 25(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General's delegate)

Inspections revealed that the NSWPF complied with this requirement.

2.1.9 Section 26 Remote application for retrieval warrant

Applications for 6 retrieval warrant were made remotely.

2.1.10 Section 30 Revocation of retrieval warrant

During the reporting period one revocation of a retrieval warrant was inspected.

2.1.11 Section 31 Emergency use of surveillance devices without a warrant

During the reporting period seven emergency application was inspected. The emergency authorisation was granted.

2.1.12 Section 32 Emergency authorisation of the use of a surveillance device in a participating jurisdiction

Two authorisations were inspected during the reporting period.

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

During the reporting period, seven applications for an emergency authorisation, which were approved, was inspected. The warrant files were found to be compliant with the requirements of the Act.

2.2 Compliance and monitoring

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

The NSWPF had adopted a practice of using a Protected Information Register (PIR) with respect to each warrant issued. The use and communication of protected information was recorded on the PIR. Also recorded were the destruction details of any protected information which is no longer required for the purposes set out in ss. (4) or (5).

As reported previously, the CAU has implemented a new Database for the purpose of surveillance device record-keeping, replacing the reliance on PIRs. The previous system remains operational but exclusively for warrants issued before the Database's installation. Previous inspection results have revealed compliance with this requirement.

2.2.2 Section 41 Dealing with records obtained by use of surveillance devices

The NSWPF has established guidelines to facilitate compliance with this provision. Information required by s. 41, which is overseen by the CAU, is securely stored in a restricted-access location limited to CAU staff. Inspections carried out at the CAU confirmed adherence to this requirement.

2.2.3 Section 44 Reports to eligible Judge or eligible Magistrate and the Surveillance Devices Commissioner (as the Attorney General's delegate)

During inspections, 511 reports were reviewed within the reporting period, with the majority being submitted within the timeframe specified in the warrant. Two reports were submitted outside the designated timeframes, none substantially so.

Most of the 511 reports inspected contained all the required information, with four reports lacking some information mandated by s. 44. Upon identification of these deficiencies, either by members of the CAU, or my delegated OILECC compliance officers during inspections, it is understood that the NSWPF staff have rectified the deficient reports and submitted amended versions thereof to the Attorney-General and relevant eligible Judges.

Over forthcoming reporting periods, OILECC will seek to work with the CAU to further encourage the provision of all s.44 reports in a timely manner. OILECC compliance officers will also continue to examine all s. 44 reports at future inspections. Any issues with s. 44 reports will continue to be brought to the attention of the NSWPF as soon as they are identified.

Further details regarding delayed reports and other issues identified at CAU are outlined below.

2.2.4 Section 47 Register of warrants and emergency authorisations

All the required information was recorded on the register.

2.2.5 Section 50 Provision for the issue of evidentiary certificates

No evidentiary certificates were inspected during the reporting period.

CAU does not include copies of evidentiary certificates in the hard copy surveillance files inspected by OILECC as the certificates are held by another section of the NSWPF. In the past, copies of

evidentiary certificates have been provided by email to OILECC, when requested. However, during this reporting period, following enquiry by OILECC, CAU sought and was granted access to a link to the electronic file in which these certificates are stored. OILECC can now ask the CAU for copies of the certificates to be made available for inspection, when required.

2.3 Miscellaneous

2.3.1 Section 52 Requirement to inform subject of surveillance

No such orders were inspected during the reporting period.

2.4 Exceptions identified at Inspections

The following exceptions were identified during the reporting period:

Types of Exceptions	Number	Key Issues	Corrective Actions
Delayed s. 44 reports.	Two	Two s. 44 reports were found to be delayed. These were due to administrative oversight involving incorrect data entry into case management systems and miscommunication between investigators and CAU staff.	The CAU has committed to conducting regular compliance checks. NSWPF have upgraded their case management system that will help to detect and prevent similar errors.
Inaccuracies and insufficient detail in s. 44 reports to the eligible Judge	Four	It was found that, on four occasions, the s. 44 reports contained inaccurate or were missing information due to administrative oversight and errors.	On all four occasions, amended s. 44 reports were submitted.
Data collected post-warrant expiry was made available to investigators.	One	Excess data collected after the warrant's expiration was briefly provided to investigators before being quarantined due to an administrative error.	An additional administrative check has been introduced to prevent a recurrence of erroneous data dissemination. The excess data is to be processed for destruction.
The warrant failed to specify the type of device to be used, as required by s 20(1)(c) of the Act.	One	A warrant was sought and authorised that did not specify the types of devices to be used as required by section 20(c) of the Act.	The NSWPF have been reminded to check the form of warrants before and after authorising to ensure they meet the legislative requirements.

Types of Exceptions	Number	Key Issues	Corrective Actions
The affidavit missing details required by s. 15(3)(e) of the Act.	One	<p>The affidavit omitted a required statement on prior warrants or emergency authorisations under s. 15(3)(e) of the Act.</p> <p>No previous surveillance devices warrant, or emergency authorisations were sought, and the error was due to administrative oversight.</p>	NSWPF have advised that the CAU will check all required information is complete in future affidavits.

Note: The NSWPF issued the highest number of surveillance device warrants. The exceptions mentioned above are comparatively minor. The NSWPF sets a high standard by self-disclosing breaches when they become aware of them and are continuously improving their internal systems to prevent these incidents. This proactive approach not only demonstrates their commitment to compliance but also ensures greater accountability and transparency in their operations.

2.5 Concluding Comments

Throughout the reporting period, the NSWPF has been generally compliant with its obligations under the Act.

The NSWPF is cooperative during inspections, and its responsiveness to suggestions and issues is indicative of its compliance culture.

2.6 Recommendations

No specific recommendations are made.

Chapter 3 New South Wales Crime Commission

3.1 Warrants – general requirements

3.1.1 Section 17 Application for a surveillance device warrant

As no applications for surveillance device warrants were made during the reporting period, none were inspected.

3.1.2 Section 17(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General's delegate)

As no surveillance device warrants were inspected, no notices were required to be viewed.

3.1.3 Section 18 Remote Application

No applications were inspected during the reporting period.

3.1.4 Section 22 Extension and variation of surveillance device warrant

No extensions or variations were inspected during the reporting period.

3.1.5 Section 23 Revocation of surveillance device warrant

No revocations were inspected during the reporting period.

3.1.6 Section 24 Discontinuance of use of surveillance device under warrant

No discontinuation notices were inspected during the reporting period.

3.1.7 Section 25 Application for retrieval warrant

As no such applications were sought, none were inspected during the reporting period.

3.1.8 Section 25(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General's delegate)

No notices were inspected during the reporting period.

3.1.9 Section 26 Remote application for retrieval warrant

No such applications were inspected during the reporting period.

3.1.10 Section 30 Revocation of retrieval warrant

No such warrants were inspected during the reporting period.

3.1.11 Section 31 Emergency use of a surveillance device without a warrant

No emergency use of a surveillance device took place during the reporting period. Consequently, no documents as to the use of a surveillance device in such circumstances were inspected during the reporting period.

3.1.12 Section 32 Emergency authorisation of the use of a surveillance device in a participating jurisdiction

No emergency authorisation for the use of a surveillance device took place during the reporting period. Consequently, no documents as to the use of a surveillance device in such circumstances were inspected during the reporting period.

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

As there were no emergency uses or authorisations inspected the reporting period, no such applications were required to be inspected.

3.2 Compliance and monitoring

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

As previously reported, the NSWPF Organised Crime Squad submits surveillance device warrant applications on behalf of the NSWCC. It is understood that currently the NSWCC utilizes the NSWPF's Surveillance Devices Database to record the utilization and transmission of protected information. Additionally, details regarding the disposal of protected information, which is no longer necessary for the purposes outlined in ss. (4) or (5), are documented in the NSWPF Database. Given the NSWCC's reliance on the NSWPF Register and Database, inspections are conducted on the records stored within these systems.

3.2.2 Section 41 Dealing with records obtained by use of surveillance devices

OILECC has been told that any information mandated by s. 41, held by the NSWCC is securely stored at the NSWCC premises, with access limited to authorised NSWCC officers.

During the reporting period, no protected information was destroyed by the NSWCC.

3.2.3 Section 44 Reports to eligible Judge or eligible Magistrate and the Surveillance Devices Commissioner (as the Attorney General's delegate)

No such reports were inspected during the reporting period.

3.2.4 Section 47 Register of warrants and emergency authorisations

Inspections revealed that no such warrants were sought during this or indeed recent reporting periods. Inspections revealed that no such authorisations were sought during this reporting periods.

3.2.5 Section 50 Provision for the issue of evidentiary certificates

No evidentiary certificates were inspected during the reporting period.

3.3 Miscellaneous

3.3.1 Section 52 Requirement to inform subject of surveillance

No such orders were inspected during the reporting period.

3.4 Exceptions identified at inspections

Since no warrants were issued by NSWCC and inspected by OILECC compliance officers, no exceptions were identified.

3.5 Concluding Comments

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

3.6 Recommendations

No specific recommendations are made.

Chapter 4 Law Enforcement Conduct Commission

4.1 Warrants – general requirements

4.1.1 Section 17 Application for a surveillance device warrant

During the reporting period, nine applications for surveillance device warrants were inspected. None were refused, nine warrants were granted.

4.1.2 Section 17(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General's delegate)

Inspections revealed that the LECC complied with this requirement.

4.1.3 Section 18 Remote Application

All nine applications were submitted remotely during this reporting period.

4.1.4 Section 22 Extension and variation of surveillance device warrant

During the reporting period, eight extensions were inspected. No variations had been sought.

4.1.5 Section 23 Revocation of surveillance device warrant

During the reporting period, six revocations were examined. All revocations had been approved by an eligible Judge.

4.1.6 Section 24 Discontinuance of use of surveillance device under warrant

Inspections revealed that the LECC complied with this requirement.

4.1.7 Section 25 Application for retrieval warrant

One application was inspected during the reporting period.

4.1.8 Section 25(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General's delegate)

Inspections revealed the LECC complied with this requirement.

4.1.9 Section 26 Remote application for retrieval warrant

No such applications were inspected during the reporting period.

4.1.10 Section 30 Revocation of retrieval warrant

No such warrants were inspected during the reporting period.

4.1.11 Section 31 Emergency use of surveillance devices without a warrant

No use of a surveillance device in such circumstances were inspected during the reporting period.

4.1.12 Section 32 Emergency authorisation of the use of a surveillance device in a participating jurisdiction

No emergency authorisation for the use of a surveillance device took place during the reporting period. Consequently, no documents as to the use of a surveillance device in such circumstances were inspected during the reporting period.

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

No emergency uses or authorisations had been made, as a result no notices were inspected during the reporting period.

4.2 Compliance and monitoring

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

An inspection of the use, communication or publication of protected information did not occur during this inspection period.

4.2.2 Section 41 Dealing with records obtained by use of surveillance devices

The LECC has developed guidelines to verify compliance with the management of records and any protected information obtained.

Information mandated by s. 41 is securely stored at the LECC premises, with access limited to authorised LECC officers.

Details regarding the delay in the destruction of historical material will be outlined in the exceptions section below.

4.2.3 Section 44 Reports to eligible Judge or eligible Magistrate and the Surveillance Devices Commissioner (as the Attorney General's delegate)

During the reporting period, eight reports were inspected, and all of them were provided to the eligible Judge within the timeframe specified in the warrant. Additionally, all reports contained the required information.

4.2.4 Section 47 Register of warrants and emergency authorisations

All required information was recorded on the register.

4.2.5 Section 50 Provision for the issue of evidentiary certificates

No evidentiary certificates were inspected during the reporting period.

4.3 Miscellaneous

4.3.1 Section 52 Requirement to inform subject of surveillance

No such orders were made during the reporting period.

4.4 Exceptions identified at inspections

During the inspection period, it was noted that the historical data collected, due to a technical malfunction in 2023², was authorised for destruction in August 2023. However, the destruction did not occur as scheduled due to a communication error on the part of the LECC. The LECC has assured OILECC that the destruction of the material will take place promptly.

4.5 Concluding Comments

Except for the matter identified, LECC maintained compliance with its obligations under the Act throughout the reporting period.

² The details of the exception can be found in the Surveillance Devices Bi-Annual Report for December 2023.

4.6 Recommendations

The LECC have been reminded to destroy all covert material that is no longer required, in accordance with s. 41(1)(b) of the Act.

Chapter 5 Independent Commission Against Corruption

5.1 Warrants – general requirements

5.1.1 Section 17 Application for a surveillance device warrant

As there were no applications for surveillance device warrants submitted during the reporting period, none were subject to inspection.

5.1.2 Section 17(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General's delegate)

As no surveillance device warrants were inspected, no notices were required to be viewed.

5.1.3 Section 18 Remote Application

No applications were inspected during the reporting period.

5.1.4 Section 22 Extension and variation of surveillance device warrant

No extensions or variations were inspected during the reporting period.

5.1.5 Section 23 Revocation of surveillance device warrant

No revocations were inspected during the reporting period.

5.1.6 Section 24 Discontinuance of use of surveillance device under warrant

No discontinuation notices were inspected during the reporting period.

5.1.7 Section 25 Application for retrieval warrant

As there were no applications for retrieval warrants submitted during the reporting period, none were subject to inspection.

5.1.8 Section 25(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General's delegate)

No notices were inspected during the reporting period.

5.1.9 Section 26 Remote application for retrieval warrant

No such applications were inspected during the reporting period.

5.1.10 Section 30 Revocation of retrieval warrant

No such warrants were inspected during the reporting period.

5.1.11 Section 31 Emergency use of surveillance devices without a warrant

No use of a surveillance device in such circumstances were inspected during the reporting period.

5.1.12 Section 32 Emergency authorisation of the use of a surveillance device in a participating jurisdiction

No emergency authorisation for the use of a surveillance device took place during the reporting period. Consequently, no documents as to the use of a surveillance device in such circumstances were inspected during the reporting period.

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

As there were no emergency uses or authorisations inspected the reporting period, no such applications were required to be inspected.

5.2 Compliance and monitoring

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

An inspection of the use, communication or publication of protected information did not occur during this inspection period. During the last inspection period it was checked and ICAC found compliant.

5.2.2 Section 41 Dealing with records obtained by use of surveillance devices

ICAC has established guidelines to ensure compliance with this provision. Information mandated by s. 41 is securely stored at the ICAC premises, with access restricted to authorised ICAC officers.

5.2.3 Section 44 Reports to eligible Judge or eligible Magistrate and the Surveillance Devices Commissioner (as the Attorney General's delegate)

No such reports were inspected during the reporting period.

5.2.4 Section 47 Register of warrants and emergency authorisations

All required information was recorded on the register.

5.2.5 Section 50 Provision for the issue of evidentiary certificates

No evidentiary certificates were issued during the reporting period.

5.3 Miscellaneous

5.3.1 Section 52 Requirement to inform subject of surveillance

No such orders were inspected during the reporting period.

5.4 Exceptions identified at inspections

No exceptions were identified as no surveillance device warrants were sought.

5.4 Concluding Comments

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

5.5 Recommendations

No specific recommendations are made.

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