

Office of the Inspector of the Law Enforcement Conduct Commission

Surveillance Devices Report for the period ending 31 December 2024

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

April 2025



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 31 December 2024.

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Table of Contents

Chapter 1. Introduction.....	1
1.1 What are the objects of the <i>Surveillance Devices Act 2007</i> ?	1
1.2 What are the different kinds of surveillance devices covered by the Act?	1
1.3 When can surveillance devices be used?	2
1.4 Warrants.....	2
1.4.1 Applying for the issue of a surveillance device warrant (Part 3 – Division 2)	2
1.4.2 Prior notice to the Attorney General	3
1.4.3 Determination of an application for a warrant	3
1.4.4 How long does a surveillance device warrant last?	3
1.4.5 Retrieval warrants (Part 3 – Division 3)	4
1.5 Emergency authorisations (Part 3- Division 4)	4
1.6 Warrants and Corresponding authorisations	5
1.6.1 Can a surveillance device warrant or emergency authorisation issued in another State or Territory of Australia be used in NSW?	5
1.6.2 Can a surveillance device warrant or emergency authorisation issued in NSW be used in another State or Territory of Australia?	5
1.7 Compliance and monitoring	5
1.7.1 Restrictions upon the use, communication, and publication of protected information	5
1.7.2 Reporting and record keeping (Part 5 - Division 2)	6
1.8 Evidentiary Certificates	7
1.9 Legislative changes made during the reporting period	7
1.10 Functions of the Inspector of the Law Enforcement Conduct Commission	8
1.10.1 Inspection function – Section 48	8
1.10.2 Reporting function – Section 49	8
1.11 The Inspection Process and Methodology	8
1.11.1 Inspection of the warrant files	9
1.11.2 Inspection of the registers	9
1.11.3 Operational Command Inspections	10
1.11.4 Post Inspection Process	10
Chapter 2 New South Wales Police Force.....	11
2.1 Warrants- general requirements	11
2.1.1 Section 17 Application for a surveillance device warrant	11
2.1.2 Section 17(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General’s delegate)	11
2.1.3 Section 18 Remote Application	11
2.1.4 Section 22 Extension and variation of surveillance device warrant	11
2.1.5 Section 23 Revocation of surveillance device warrant	11

2.1.6 Section 24 Discontinuance of use of surveillance device under warrant.....	11
2.1.7 Section 25 Application for retrieval warrant.....	11
2.1.8 Section 25(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General’s delegate).....	11
2.1.9 Section 26 Remote application for retrieval warrant.....	11
2.1.10 Section 30 Revocation of retrieval warrant	11
2.1.11 Section 31 Emergency use of surveillance devices without a warrant	11
2.1.12 Section 32 Emergency authorisation of the use of a surveillance device in a participating jurisdiction.....	12
2.1.13 Section 33 Application for approval after use of surveillance device without warrant or under emergency authorisation.....	12
2.2 Compliance and monitoring.....	12
2.2.1 Section 40 Prohibition on use, communication, publication of protected information	12
2.2.2 Section 41 Dealing with records obtained by use of surveillance devices	12
2.2.3 Section 44 Reports to eligible Judge or eligible Magistrate and the Surveillance Devices Commissioner (as the Attorney General’s delegate).....	12
2.2.4 Section 47 Register of warrants and emergency authorisations	13
2.2.5 Section 50 Provision for the issue of evidentiary certificates.....	13
2.3 Miscellaneous.....	13
2.3.1 Section 52 Requirement to inform subject of surveillance.....	13
2.4 Exceptions identified at Inspections.....	13
2.5 Concluding Comments	13
2.6 Recommendations	14
Chapter 3 New South Wales Crime Commission.....	15
3.1 Warrants – general requirements.....	15
3.1.1 Section 17 Application for a surveillance device warrant	15
3.1.2 Section 17(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General’s delegate).....	15
3.1.3 Section 18 Remote Application.....	15
3.1.4 Section 22 Extension and variation of surveillance device warrant.....	15
3.1.5 Section 23 Revocation of surveillance device warrant	15
3.1.6 Section 24 Discontinuance of use of surveillance device under warrant.....	15
3.1.7 Section 25 Application for retrieval warrant.....	15
3.1.8 Section 25(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General’s delegate).....	15
3.1.9 Section 26 Remote application for retrieval warrant.....	15
3.1.10 Section 30 Revocation of retrieval warrant	15
3.1.11 Section 31 Emergency use of a surveillance device without a warrant.....	15
3.1.12 Section 32 Emergency authorisation of the use of a surveillance device in a participating jurisdiction.....	15

3.1.13 Section 33 Application for approval after use of surveillance device without warrant or under emergency authorisation.....	16
3.2 Compliance and monitoring	16
3.2.1 Section 40 Prohibition on use, communication, or publication of protected information.....	16
3.2.2 Section 41 Dealing with records obtained by use of surveillance devices.....	16
3.2.3 Section 44 Reports to eligible Judge or eligible Magistrate and the Surveillance Devices Commissioner (as the Attorney General’s delegate).....	16
3.2.4 Section 47 Register of warrants and emergency authorisations.....	16
3.2.5 Section 50 Provision for the issue of evidentiary certificates	16
3.3 Miscellaneous.....	16
3.3.1 Section 52 Requirement to inform subject of surveillance.....	16
3.4 Exceptions identified at inspections.....	16
3.5 Concluding Comments.....	16
3.6 Recommendations.....	16
Chapter 4 Law Enforcement Conduct Commission	17
4.1 Warrants – general requirements.....	17
4.1.1 Section 17 Application for a surveillance device warrant	17
4.1.2 Section 17(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General’s delegate).....	17
4.1.3 Section 18 Remote Application.....	17
4.1.4 Section 22 Extension and variation of surveillance device warrant.....	17
4.1.5 Section 23 Revocation of surveillance device warrant	17
4.1.6 Section 24 Discontinuance of use of surveillance device under warrant.....	17
4.1.7 Section 25 Application for retrieval warrant.....	17
4.1.8 Section 25(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General’s delegate).....	17
4.1.9 Section 26 Remote application for retrieval warrant.....	17
4.1.10 Section 30 Revocation of retrieval warrant	17
4.1.11 Section 31 Emergency use of surveillance devices without a warrant	17
4.1.12 Section 32 Emergency authorisation of the use of a surveillance device in a participating jurisdiction.....	17
4.1.13 Section 33 Application for approval after use of surveillance device without warrant or under emergency authorisation.....	17
4.2 Compliance and monitoring	18
4.2.1 Section 40 Prohibition on use, communication, or publication of protected information.....	18
4.2.2 Section 41 Dealing with records obtained by use of surveillance devices.....	18
4.2.3 Section 44 Reports to eligible Judge or eligible Magistrate and the Surveillance Devices Commissioner (as the Attorney General’s delegate).....	18
4.2.4 Section 47 Register of warrants and emergency authorisations.....	18

4.2.5 Section 50 Provision for the issue of evidentiary certificates	18
4.3 Miscellaneous.....	18
4.3.1 Section 52 Requirement to inform subject of surveillance.....	18
4.4 Exceptions identified at inspections.....	18
4.5 Concluding Comments.....	18
4.6 Recommendations.....	18
Chapter 5 Independent Commission Against Corruption.....	19
5.1 Warrants – general requirements.....	19
5.1.1 Section 17 Application for a surveillance device warrant.....	19
5.1.2 Section 17(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General’s delegate).....	19
5.1.3 Section 18 Remote Application.....	19
5.1.4 Section 22 Extension and variation of surveillance device warrant.....	19
5.1.5 Section 23 Revocation of surveillance device warrant.....	19
5.1.6 Section 24 Discontinuance of use of surveillance device under warrant.....	19
5.1.7 Section 25 Application for retrieval warrant.....	19
5.1.8 Section 25(5A) Notice to be served on the Surveillance Devices Commissioner (as the Attorney General’s delegate).....	19
5.1.9 Section 26 Remote application for retrieval warrant.....	19
5.1.10 Section 30 Revocation of retrieval warrant.....	19
5.1.11 Section 31 Emergency use of surveillance devices without a warrant.....	19
5.1.12 Section 32 Emergency authorisation of the use of a surveillance device in a participating jurisdiction.....	19
5.1.13 Section 33 Application for approval after use of surveillance device without warrant or under emergency authorisation.....	20
5.2 Compliance and monitoring	20
5.2.1 Section 40 Prohibition on use, communication, or publication of protected information.....	20
5.2.2 Section 41 Dealing with records obtained by use of surveillance devices.....	20
5.2.3 Section 44 Reports to eligible Judge or eligible Magistrate and the Surveillance Devices Commissioner (as the Attorney General’s delegate).....	20
5.2.4 Section 47 Register of warrants and emergency authorisations.....	20
5.2.5 Section 50 Provision for the issue of evidentiary certificates	20
5.3 Miscellaneous.....	20
5.3.1 Section 52 Requirement to inform subject of surveillance.....	20
5.4 Exceptions identified at inspections.....	20
5.4 Concluding Comments.....	20
5.5 Recommendations.....	20

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 31 December 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. Sections 7(2) – (5) of the Act set 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 section 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, Section 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 section 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 section 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 section 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 section 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 section 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 section 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 section 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 section 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 Sch 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 section 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 section 7(4) or section 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 section 40(4) or section 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 subsections 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 section 47(2) and section 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 section 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 section 35 (Eligible Judge may approve emergency use of powers) or under a provision of a corresponding law that corresponds to section 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 section 52 of the Act.

1.9 Legislative changes made during the reporting period.

There were minor legislative changes to the Act during the reporting period, 1 July 2024 to 31 December 2024.

The *Witness Protection Amendment Act 2024* was enacted to provide additional protection for and assistance to participants and former participants in the witness protection program and to provide for the disclosure and secure management of certain information relating to the program. The *Witness Protection Amendment Act 2024* made minor amendments to the Act providing for the ability to install, use or maintain a listening device and/or a data surveillance device in accordance with the *Witness Protection Act 1995* or an instrument made under that Act.

1.10 Functions of the Inspector of the Law Enforcement Conduct Commission

1.10.1 Inspection function – Section 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 section 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 – Section 49

The Inspector has a reporting function under section 49 of the Act. According to section 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 Corruption (**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 section 49 of the Act. It covers the period from 1 July 2024 to 31 December 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 section 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 31 December 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 section 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 section 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 reliance on a significant volume of surveillance device warrants, as well as the decentralised 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 centralised Covert Applications Unit (CAU).

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

Only one Operational Command inspection was feasible during this reporting period due to staffing levels within OILECC. This inspection took place on 11 December 2024. Nil specific compliance issues were found in the documentation reviewed, but several general compliance issues were identified and are described in Chapter 2 below.

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 principally carried out at the premises of the CAU. One Operational Command Inspection took place at the State Crime Command.

2.1 Warrants- general requirements

2.1.1 Section 17 Application for a surveillance device warrant

During the reporting period, 354 surveillance device warrant applications were inspected, resulting in 345 approvals and 9 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.

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 34 extensions and 1 variation were inspected.

2.1.5 Section 23 Revocation of surveillance device warrant

Out of the inspected warrants, 116 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.

2.1.7 Section 25 Application for retrieval warrant

Three applications for a retrieval warrant were inspected during the reporting period, the warrants were 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 three retrieval warrants were made remotely.

2.1.10 Section 30 Revocation of retrieval warrant

During the reporting period two revocations of a retrieval warrant were inspected.

2.1.11 Section 31 Emergency use of surveillance devices without a warrant

During the reporting period four emergency applications were inspected. The emergency authorisations were granted.

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

One authorisation was 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, five applications for an emergency authorisation, which were approved, were 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

In the past, 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 was no longer required for the purposes set out in subsection (4) or (5).

As reported previously, the CAU has since 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

Critical records pertaining to the issue of a warrant, the supporting affidavit, the warrant and section 44 reports are retained by the CAU, in a securely stored restricted-access location limited to CAU staff.

However, the police officers spoken to, at the Operational Command inspection, reported an apparent absence of written procedures circulated among commands, with respect to the proper destruction of surveillance records. Whilst my senior compliance officer was informed that the procedures are in development, given that my predecessor had raised concerns as to the lack of such procedures, I have requested that the finalisation of these procedures be given priority.

The Operational Command inspection also revealed that some police officers have not received formal training on the proper retention, dissemination and disposal of surveillance records generally. I have informed the Commissioner of Police that the provision of formal training, as to the latter, should also be given priority.

In addition to the above, the Operational Command inspection also revealed a lack of knowledge, by some of the officers spoken to, on the potential for conditions to be placed on a surveillance device warrant. I have advised the NSWPF on the importance of law enforcement officers, documenting their activities, undertaken pursuant to a warrant, in a manner, so to demonstrate that any conditions imposed on the warrants had been complied with.

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, 331 reports were reviewed within the reporting period, with the majority being submitted within the timeframe specified in the warrant. One report was submitted outside the designated timeframes.

OILECC is continuing to work with the CAU to encourage the timely provision of all section 44 reports. OILECC compliance officers will continue to examine all section 44 reports at future inspections. Any issues with section 44 reports will continue to be brought to the attention of the NSWPF as soon as they are identified.

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

10 evidentiary certificates were inspected during the reporting period. Inspections revealed compliance with this requirement.

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 section 44 reports.	One	One section 44 report was found to be delayed. This was due to an admin error.	CAU has confirmed proactive measures have been implemented to prevent similar occurrences in the future.
The affidavit is missing details required by section 17(3)(e) of the Act.	Three	Three affidavits failed to mention the prior use of a surveillance device warrant in relation to the relevant offence.	CAU have advised that they will continue to check all required information is 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 subsection (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 section 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, no applications for surveillance device warrants were inspected.

4.1.2 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.

4.1.3 Section 18 Remote Application

No applications were submitted remotely during the reporting period.

4.1.4 Section 22 Extension and variation of surveillance device warrant

There were no extensions or variations inspected during the reporting period.

4.1.5 Section 23 Revocation of surveillance device warrant

No revocations were examined during the reporting period.

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

One application was inspected during the reporting period.

4.1.10 Section 30 Revocation of retrieval warrant

One revocation of a retrieval warrant was 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 section 41 is securely stored at the LECC premises, with access limited to authorised LECC officers.

During the previous inspection period, it was noted that historical data had been collected, due to a technical malfunction and was authorised for destruction in August 2023. However, it was reported that the destruction did not occur as scheduled. As confirmed in an inspection in November 2024, LECC attended to the destruction of the historical data in July 2024.

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, one report was inspected, and it was found to be provided to the eligible Judge within the timeframe specified in the warrant. The report 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

Nil exceptions identified.

4.5 Concluding Comments

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

4.6 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

One application for a surveillance device warrant was inspected during the reporting period. The one application was approved and none were refused.

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

Inspections revealed that the ICAC complied with this requirement.

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 authorisations 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 section 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)

One report was 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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