

Report under Section 49(1) of the
Surveillance Devices Act 2007
the period ending 31 December 2011

April 2012

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27 April 2012

The Hon Greg Smith SC MP
Attorney-General, and Minister for Justice
Level 31, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Attorney,

The Surveillance Devices Act 2007 requires the Ombudsman to inspect the records of the NSW Police Force, the New South Wales Crime Commission, the Independent Commission Against Corruption and the Police Integrity Commission in relation to their use of surveillance device warrants to determine whether or not the requirements of the Act are being complied with.

The Act also requires me to report to you as soon as practicable each six months following the commencement of the provisions.

I am pleased to present you with the report under section 49 (1) of the Surveillance Devices Act 2007 which covers our inspection of records relating to covert search warrants for the six months up to 31 December 2011.

Pursuant to section 49 (2) of the Act, the Attorney-General is required to lay the report (or cause it to be laid) before both Houses of Parliament within 15 days following its receipt.

Yours faithfully

A handwritten signature in black ink that reads 'B. A. Barbour'.

Bruce Barbour
Ombudsman

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Introduction

The *Surveillance Devices Act 2007 (NSW)* (SD Act) allows for the use of surveillance devices to investigate crime and to enable evidence to be obtained of the commission of such crime or the identity or location of the offender(s). The SD Act covers the installation, use and maintenance of listening, optical, tracking, and data surveillance devices and restricts the communication and publication of private conversations, surveillance activities, and information obtained from their use.

The Act also establishes an accountability regime. Reporting and record keeping obligations are imposed on the law enforcement agencies eligible to use surveillance devices as are provisions for the safe keeping and destruction of information obtained from the use of surveillance devices.

The Act also requires the NSW Ombudsman to conduct inspections of the surveillance device records of law enforcement agencies to determine the extent of compliance by those agencies and their officers with the Act.

Four law enforcement agencies are currently the subject of these inspections:

NSW Police Force

NSW Crime Commission

The Police Integrity Commission

The Independent Commission Against Corruption

The Ombudsman is required by section 49(1) of the Act to report to the Minister at 6-monthly intervals on the result of inspections. The Minister is required by section 49(2) to lay the report or cause the report to be laid before both Houses of Parliament within 15 days after receiving the report.

This report is for the period 1 July 2011 until 31 December 2011.

Scope of the inspection

The aim of the legislation is to enable law enforcement agencies to utilise surveillance devices to assist in the successful investigation and prosecution of certain offences. Such use is, of course, subject to meeting certain procedural and record keeping requirements. The inspection and monitoring by the Ombudsman aims to foster agency compliance with the Act and to provide public accountability through regular reporting to the Minister and Parliament. The approach taken in the inspections conducted by the Ombudsman is to examine the records of each agency for compliance with the record and document keeping requirements while at the same time considering such other aspects of compliance as can be determined from those records and from questions asked of relevant officers.

Inspections focus on compliance outlined in three main areas of the Act: Part 3 dealing with warrants and emergency authorisations; Part 5 covering compliance and monitoring, including dealing with records obtained by use of surveillance devices, the use, communication or publication of protected information and reporting and record keeping, and; Part 6 requiring notification to the Attorney about warrants sought, as well as notification to the subject of surveillance if directed by the eligible Judge.

Surveillance device warrants are issued by eligible Judges of the Supreme Court or eligible Magistrates in the case of a surveillance device warrant authorising the use of a tracking device only or a retrieval warrant in respect of a tracking device. Applications are required to include certain information and generally must be accompanied by an affidavit setting out the grounds on which the warrant is sought. While the inspection of the records includes an examination of the matters required to be specified it does not examine the sufficiency or otherwise of the information in support of the application. That is a matter for the relevant judicial officer to determine.

The Ombudsman inspects each individual surveillance device warrant file at each agency. The inspection involves an examination of the application, warrant, notice to the Attorney-General and the report to the issuing judicial officer and the Attorney-General, and any other information contained on the file.

The inspection involves checking that:

- the application is made to an eligible Judge or in appropriate cases, an eligible Magistrate
- the application includes the name of the applicant and the nature and duration of the warrant including the kind of device sought and is supported by an affidavit
- the warrant contains the information required by s. 20

- any extension or variation to the warrant complies with s. 22
- the revocation of a warrant complies with s. 23
- the appropriate law enforcement officer notifies the chief officer immediately they are satisfied the use of the warrant is no longer necessary, and the chief officer takes steps to discontinue the use of the device or devices as soon as practicable
- where a warrant has been revoked the use of the device is discontinued immediately
- the s. 51 notice contains the required information and has been provided to the Attorney-General before the warrant has been issued and that the Attorney-General has been given an opportunity to be heard on the application if so desired
- the report under s. 44 has been provided to the eligible judge and the Attorney-General within the time specified in the warrant
- the report complies with the requirements of s. 41
- the application for continued use of an authorised surveillance device in an emergency situation complies with ss. 31 and 32
- where a surveillance device is used without a warrant, that an application for approval is made within two business days to an eligible judge and that such approval complies with s. 33
- the register of warrants and emergency applications contains the information required by s. 47
- that any directions under s. 52 have been complied with.

The inspection also includes examining records relating to the use of protected information obtained by the use of surveillance devices and the security of those records at various locations.

Inspection Overview

During the period 30 June 2011 to 31 December 2011 a total of 424 surveillance device warrants were granted across the four NSW law enforcement agencies.

Figure 1: Surveillance device warrants issued 1 July 2011 – 31 December 2011

Agency	Number
NSW Police Force	267
NSW Crime Commission	150
Independent Commission Against Corruption	5
Police Integrity Commission	2
Total	424

Figure 2: Surveillance device warrant reports 1 July 2011 – 31 December 2011

Agency	Number
NSW Police Force	239
NSW Crime Commission	79
Independent Commission Against Corruption	5
Police Integrity Commission	0
Total	323

Figure 3: Surveillance device warrants revoked 1 July 2011 – 31 December 2011

Agency	Number
NSW Police Force	36
NSW Crime Commission	10
Independent Commission Against Corruption	3
Police Integrity Commission	0
Total	49

Figure 4: Emergency use of surveillance devices warrants 1 July 2011 – 31 December 2011

Agency	Number
NSW Police Force	0
NSW Crime Commission	1
Independent Commission Against Corruption	0
Police Integrity Commission	0
Total	1

NSW Police Force

During the reporting period 267 warrants were issued, two were retrieval warrants. No emergency authorisations were granted. Forty six (46) applications had not been proceeded with or cancelled.

We were satisfied the NSW Police Force had generally complied with its obligations under the Act. The exceptions are detailed below.

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

Warrants

Section 17 Applications for a surveillance device warrant

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

Section 18 Remote Application

There were five remote applications made.

All applications were notified to the Attorney-General and affidavits were provided to the issuing judicial officer within the legislative time frame.

Section 22 Extension and variation of surveillance device warrant

Seven warrants were varied or extended during the reporting period.

Section 23 Revocation of surveillance device warrant

There were 36 revocations during the reporting period.

Section 24 Discontinuance of use of surveillance device under warrant

Section 24(2)(a) requires that a surveillance device which is no longer needed is to be discontinued as soon as practicable. NSW Police Force use a Notification of Discontinuation form to record such action. Section 24(2)(b) further requires that when an application for discontinuation is made, an application is also made for the revocation of the warrant under s.23.

While the Act requires that a surveillance device be discontinued as soon as practical after the chief officer of the law enforcement agency is satisfied that the use of the device is no longer necessary, there is no time limit specified for making an application for revocation of the warrant. As an administrative practicality, I have taken the view that it is not unreasonable that no application for revocation be made for any warrant which will in any case expire within five days of the use of the surveillance device being discontinued.

Our inspections identified the following warrants which did not comply with the above because there was no notification of revocation:

SD11/425 Discontinued 16/08/2011 Expired 12/09/2011

SD11/432 Discontinued 15/08/2011 Expired 04/09/2011

In all other cases inspected where there was a revocation, there was a notice of discontinuance of the use of the surveillance device on file.

Section 25 Application for retrieval warrant

Two applications were made for a retrieval warrant and both warrants were granted.

Section 26 Remote application

No remote applications were made for retrieval warrants.

Section 30 Revocation of retrieval warrant

No retrieval warrants were revoked.

The following issues were noted during inspections at the NSWPF and were raised with the Commissioner in writing. The response from NSWPF is set out below each warrant.

SD11/0380

This urgent application was to be issued from 11 July to 16 July, the warrant incorrectly states issue date as 11 June. The discontinuance notice was also incorrectly changed from 11 July (the correct date) to 11 June.

NSWPF Response: The date on the warrant was a typo. It appears that the date was incorrectly changed, by hand, on the Discontinuance Notice (the s. 44 Report includes the correct dates for installation and use).

SD11/0349

The s. 44 report did not indicate the period during which the devices were used as required by s. 44(d).

NSWPF Response: Email sent to applicant officer telling them to re-submit s. 44 report with information regarding devices as required.

SD11/0343

The s. 44 report and the discontinuance notice indicated that the device was deactivated and removed on 22 October 2011, the warrant expired on 1 October 2011.

NSWPF Response: The devices were not retrieved within 10 days of expiry of warrant. A retrieval warrant was granted on 17/10, and the devices retrieved on 22/10.

It appears the s. 44 report submitted for the substantive warrant included information regarding both the substantive warrant and the retrieval warrant.

The applicant has been contacted and told to submit two s. 44 reports – one for the substantive warrant, and one for the retrieval warrant.

SD11/0311

The s. 44 Report stated that the device was used but no further particulars are provided.

NSWPF Response: The applicant has now confirmed the devices were not used – typo in the s. 44 report. The applicant has been advised to submit an updated s. 44 report to reflect the correct situation.

SD11/0100

This warrant expired on 22 May 2011 and the s. 44 report states that tracking devices were installed and activated on 22 September 2011 and 23 September 2011

NSWPF Response: In reply to an email sent to the applicant, he stated that the use of 'September' was a typographical error and the report should have stated the tracking devices were installed and activated on 22 February 2011 and 23 February 2011 which was within the duration of the warrant.

SD11/0131

The description of the vehicle on the warrant did not match the description on the s. 44 report, this appeared to be a typographical error.

NSWPF: Email sent to applicant seeking advice (it appears that it is a typo and correct description is on the warrant).

The Ombudsman will continue to follow up until this issue is resolved.

SD11/0175

The s. 44 report stated that the tracking device was deactivated and removed on 8th July 2011. However, the warrant expired on the 5th July 2011. While the device may be removed within 10 days of the expiry of the warrant it must be discontinued by the expiry date.

NSWPF Response: It appears the applicant may not have turned their mind to whether the device was deactivated at the expiry of the warrant, or on retrieval. An email has been sent to applicant to confirm correct deactivation date. If it is different to what is currently stated, then a supplementary s. 44 report with the correct details will be sought.

The Ombudsman will continue to follow up until this issue is resolved.

SD11/042

The s. 44 report in relation to deactivation and removal appears to relate to the subsequent warrant for the same target (i.e. SD11/544)

NSWPF Response: SD11/0442 expired on 7/10. SD11/544 was a new warrant issued on 5/10 (both warrants related to use of LDs in the same premises, however, the use of LDs on/about the body in 11/442 was not replicated in 11/544).

The applicant has been asked to submit a s. 44 report regarding 11/442 to reflect the fact of the use of the devices pursuant to that warrant (and the fact that the devices in the premises were not deactivated/removed because, before the expiry of 442, 544 came into effect) for the duration of that warrant.

It appears the s. 44 report for 11/544 incorrectly nominates the installation time/date as 11pm on the 23/8/11 (instead of activation effectively occurring on 7/10/11 when 11/544 was issued). The applicant has been asked to submit a supplementary s. 44 report for 11/544 and to more accurately reflect correct 'installation' times.

SD11/0620

This warrant was revoked 18 November 2011 but no discontinuation notice is on the file.

NSWPF Response: Email sent to the applicant seeking a copy of the discontinuance notice. Noted from the 'application for revocation' stored on NSWPF internal shared drive there is reference to the devices being discontinued on 17/11/11.

SD11/0659

The warrant was issued 14 December 2011 and expired 13 March 2012. The s. 44 report stated that the devices were used on 19 December 2011. There was neither discontinuance nor revocation for this warrant.

NSWPF Response: Section 44 report regarding this warrant now received. It appears the use of the devices was discontinued on 19/12/11. It appears to be an oversight by the applicant not to have submitted a revocation notice.

A Statewide email message was sent on the 30/1/12 reminding all NSW police that they must submit a revocation notice once devices are no longer being used pursuant to a warrant.

An additional email will be sent to investigators and Crime Managers reminding them of their obligations to submit revocation notices once devices are no longer being used.

Emergency Authorisations

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

There was no emergency use of surveillance device warrants.

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

There was no emergency use of surveillance device warrants in participating jurisdictions.

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

There was no emergency use of surveillance device warrants.

Compliance and monitoring

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

During this reporting period additional inspections were carried out at State Crime Command, Homicide Squad, Gangs Squad and Strike Force 'Raptor', and at the Professional Standards Command premises. Staff at these locations used the Protected Information Registers and protected information was securely stored. Where protected information was obtained under controlled operations by law enforcement participants operating under assumed names this information was also recorded and stored securely.

Section 41 Dealing with records obtained by use of surveillance devices

NSW Police Force personnel use the protected information registers to record any dealing with protected information. Certain staff at each Local Area Command are tasked with inspecting these records in addition to our inspections. During our inspections at the above locations we noted the registers were kept in accordance with the Act.

Section 44 Reports to eligible Judge or eligible Magistrate and Attorney-General

Section 44 of the SD Act requires a report to be furnished to the eligible Judge, or eligible Magistrate, as the case may be, and to the Attorney-General. I note that the maximum penalty for failure to comply with ss. 44(1)(2) and (6) is 20 penalty units or imprisonment for a term of 12 months, or both.

The following warrants issued during the reporting period had not been reported to the eligible Judge and the Attorney-General within the specified number of days following the expiry of the warrant as required.

Warrant Number	Issued	Expiry	Revoked	Location
SD10/0628	05-Jan-11	04-Apr-11		Fraud
SD11/0006	11-Jan-11	09-Apr-11		Property
SD11/0010	04-Apr-11	01-Sep-11		Kings Cross Detectives
SD11/0056	31-Jan-11	28-Feb-11		Robbery
SD11/0097	04-May-11	01-Aug-11		Property
SD11/0103	01-Mar-11	29-Mar-11		The Rocks
SD11/0148	16-Mar-10	26-Mar-11		Newcastle
SD11/0171	06-Apr-11	30-Oct-11		MEOCS
SD11/0173	29-Mar-11	29-Apr-11		PSC
SD11/0181	29-Mar-11	29-Apr-11		Liverpool
SD11/0199	05-Apr-11	04-Jul-11		Homicide
SD11/0201	07-Apr-11	04-Oct-11		Robbery
SD11/0206	15-Apr-11	26-Aug-11		Robbery and Serious Crime
SD11/0217	14-Apr-11	13-Jul-11		Charlestown
SD11/0226	20-May-11	18-Aug-11	03-Jun-11	MRU
SD11/0228	19-Apr-11	16-Jul-11		Gangs
SD11/0235	06-May-11	05-Jul-11		Nambucca Heads
SD11/0244	02-May-11	30-Jul-11		Robbery
SD11/0246	03-May-11	02-Jul-11		Liverpool
SD11/0253	03-May-11	17-Jun-11	13-May-11	Robbery
SD11/0256	12-May-11	09-Aug-11	14-Jul-11	Batemans Bay
SD11/0261	12-May-11	10-Aug-11	20-May-11	Redfern RES
SD11/0267	11-May-11	10-Jul-11		Liverpool
SD11/0273	17-May-11	16-Jul-11		Lake Macquarie
SD11/0281	30-May-11	28-Jul-11		Lake Mac
SD11/0287	18-May-11	02-Jul-11		Mid Nth Coast
SD11/0289	19-May-11	17-Aug-11		Robbery
SD11/0297	20-May-11	16-Aug-11		Robbery
SD11/0300	02-Jun-11	01-Aug-11		Kempsey
SD11/0302	25-May-11	24-Jul-11		Hills LAC
SD11/0310	10-Jun-11	09-Aug-11		Brisbane Waters

Warrant Number	Issued	Expiry	Revoked	Location
SD11/0316	31-May-11	21-Jun-11		Bankstown
SD11/0323	15-Jun-11	13-Aug-11		Harbourside
SD11/0327	16-Jun-11	15-Aug-11		Burke
SD11/0330	24-Jun-11	23-Aug-11	21-Jul-11	St Marys
SD11/0335	21-Jun-11	19-Sep-11		Bathurst
SD11/0336	15-Jun-11	14-Aug-11		Kings Cross
SD11/0340	24-Jun-11	20-Sep-11		Griffith
SD11/0347	21-Jun-11	18-Sep-11		Fraud
SD11/0351	30-Jun-11	28-Aug-11		Lake Illawarra
SD11/0353	14-Jul-11	28-Aug-11		Kings Cross
SD11/0354	04-Jul-11	18-Aug-11		North West Metropolitan RES
SD11/0357	27-Jun-11	26-Aug-11		Newcastle JIRT
SD11/0358	29-Jun-11	24-Sep-11		Surry Hills RES
SD11/0359	30-Aug-11	28-Nov-11	18-Nov-11	Redfern
SD11/0363	02-Aug-11	01-Oct-11		Redfern
SD11/0365	30-Jun-11	28-Sep-11		Property
SD11/0376	19-Jul-11	16-Sep-11		Lake Macquarie
SD11/0379	21-Jul-11	19-Oct-11		Bowral
SD11/0382	26-Jul-11	19-Sep-11		Penrith
SD11/0383	26-Jul-11	19-Sep-11		Penrith
SD11/0387	20-Oct-11	09-Apr-12		Ashfield
SD11/0388	16-Jul-11	30-Jul-11		Gangs
SD11/0397	26-Sep-11	25-Nov-11		Manly
SD11/0398	26-Jul-11	24-Oct-11		St Marys
SD11/0399	25-Jul-11	08-Sep-11		Mid Nth Coast
SD11/0401	19-Sep-11	02-Nov-11		Mac Fields
SD11/0408	27-Jul-11	10-Sep-11		ACS
SD11/0413	27-Jul-11	08-Sep-11		Griffith
SD11/0414	04-Aug-11	22-Dec-11		MEOCS
SD11/0419	02-Aug-11	01-Oct-11		Eastern Subs
SD11/0424	02-Sep-11	16-Oct-11		Cabramatta
SD11/0431	05-Aug-11	02-Nov-11		MEOCS
SD11/0433	05-Aug-11	04-Sep-11		Robbery
SD11/0435	16-Sep-11	30-Oct-11		Tamworth
SD11/0436	08-Aug-11	07-Oct-11		MEOCS
SD11/0438	22-Aug-11	20-Nov-11		Bathurst
SD11/0439	16-Aug-11	14-Nov-11		Homicide
SD11/0441	23-Aug-11	07-Oct-11		Batemans Bay
SD11/0443	24-Aug-11	22-Nov-11		Redfern RES
SD11/0449	29-Aug-11	28-Oct-11		Mid Nth Coast
SD11/0454	13-Oct-11	08-Jan-12		Springwood
SD11/0455	25-Aug-11	23-Nov-11		MEOCS

Warrant Number	Issued	Expiry	Revoked	Location
SD11/0456	31-Aug-11	30-Oct-11		Wollongong
SD11/0458	25-Aug-11	23-Nov-11		Newcastle
SD11/0459	02-Sep-11	02-Oct-11		MEOCS
SD11/0462	02-Sep-11	16-Oct-11		Homicide
SD11/0464	13-Oct-11	08-Jan-12		Cabramatta
SD11/0465	12-Sep-11	11-Nov-11		FOCS
SD11/0467	14-Sep-11	12-Nov-11		Kings Cross
SD11/0470	14-Oct-11	09-Jan-12		Lake Illawarra
SD11/0473	01-Sep-11	29-Nov-11		Property
SD11/0476	21-Sep-11	20-Dec-11		Richmond Drug Unit
SD11/0482	05-Sep-11	04-Dec-11		TIS
SD11/0483	05-Sep-11	04-Dec-11		Robbery
SD11/0485	08-Sep-11	20-Oct-11		Newcastle
SD11/0489	16-Sep-11	31-Oct-11		St Marys
SD11/0495	09-Sep-11	08-Dec-11		Robbery
SD11/0498	12-Sep-11	11-Nov-11		Kings Cross
SD11/0501	02-Nov-11	29-Jan-12		Taree
SD11/0503	09-Jan-12	07-Apr-11		Griffith
SD11/0504	04-Oct-11	31-Dec-11		Newcastle
SD11/0509	16-Sep-11	28-Nov-11		Newcastle
SD11/0511	16-Sep-11	15-Dec-11		Casino Inv Squad
SD11/0512	28-Sep-11	20-Dec-11		Sutherland
SD11/0514	20-Sep-10	19-Dec-11		Firearms and Organised Crime
SD11/0515	26-Sep-11	23-Dec-11		Property Crime
SD11/0517	21-Sep-11	20-Dec-11		Drug Squad
SD11/0518	29-Sep-11	28-Dec-11		Metro Robbery Unit
SD11/0520	22-Sep-11	05-Nov-11		Lake Illawarra
SD11/0521	26-Sep-11	23-Dec-11		Homicide
SD11/0524	13-Oct-11	12-Nov-11		Metropolitan Robbery Unit
SD11/0526	28-Sep-11	20-Dec-11		Robbery and Serious Crime
SD11/0529	29-Sep-11	27-Dec-11		Mid North Coast
SD11/0530	30-Sep-11	29-Dec-11		Robbery and Serious Crime
SD11/0531	30-Sep-11	29-Dec-11		Botany Bay LAC
SD11/0535	06-Oct-11	21-Dec-11		Organised Crime
SD11/0537	04-Oct-11	03-Dec-11		ACS
SD11/0539	12-Oct-11	31-Dec-11		Drug
SD11/0544	05-Oct-11	20-Dec-11		Strike Force 'RAPTOR'
SD11/0556	14-Oct-11	12-Nov-11		Metropolitan Robbery Unit
SD11/0562	02-Nov-11	02-Dec-11		Property

Warrant Number	Issued	Expiry	Revoked	Location
SD11/0570	21-Oct-11	19-Nov-11		Blacktown
SD11/0573	25-Oct-11	15-Dec-11		Port Macquarie JIRT
SD11/0580	26-Oct-11	25-Nov-11		Burwood

The issue of S. 44 Reports continues to be problematic. It appeared that these reports were received from the law enforcement officers responsible for the warrant but not provided to the eligible Judge or to the Attorney-General (or both) within the time specified in the warrant.

Warrant Number	Issued	Expiry	Revoked	Report to Eligible Judge	Report to Attorney-General
SD11/0299	24-May-11	22-Aug-11	03-Jun-11	25-Aug-11	10-Aug-11
SD11/0308	26-May-11	25-Jun-11	08-Jun-11	25-Aug-11	03-Aug-11
SD11/0155	21-Mar-11	18-Jun-11	20-Apr-11	25-Aug-11	15-Aug-11
SD11/0265	09-May-11	08-Jun-11	11-May-11	25-Aug-11	17-Aug-11
SD11/0114	28-Feb-11	28-May-11	03-May-11	25-Aug-11	17-Aug-11
SD11/0307	02-Jun-11	31-Jul-11	27-Jul-11	02-Nov-11	31-Aug-11
SD11/0164	23-Mar-11	21-May-11	03-May-11	25-Aug-11	17-Aug-11
SD11/0065	17-Feb-11	02-Apr-11	18-Mar-11	25-Aug-11	11-Aug-11
SD11/0198	04-Apr-11	19-May-11	12-May-11	02-Nov-11	17-Oct-11
SD11/0013	01-Feb-11	01-May-11	17-Mar-11	02-Nov-11	18-Oct-11
SD11/0012	07-Jan-11	20-Feb-11	27-Jan-11	25-Aug-11	09-Aug-11
SD11/0016	14-Jan-11	13-Apr-11	16-Mar-11	02-Nov-11	05-Oct-11
SD11/0007	07-Jan-11	06-Apr-11	17-Feb-11	02-Nov-11	17-Oct-11

The following reports were provided to the Attorney-General within the time specified in the warrant. However there were no details as to when the reports were provided to the eligible Judge.

Warrant Number	Issued	Expiry	Revoked	Notice to Attorney-General
SD11/0552	27-Oct-11	25-Jan-12		01-Dec-11
SD11/0564	27-Oct-11	26-Dec-11		01-Dec-11
SD11/0513	20-Sep-11	18-Nov-11		15-Dec-11
SD11/0242	21-Apr-11	21-May-11	05-May-11	04-Aug-11
SD11/0437	10-Aug-11	08-Nov-11	30-Sep-11	19-Aug-11

Section 47 Register of warrants and emergency authorisations

The Act requires the chief officer of the law enforcement agency to keep a register of warrants and emergency authorisations. The register is required to specify certain particulars. The register contained the required particulars.

Evidentiary Certificates

Section 50 Provision for the issue of evidentiary certificates

No evidentiary certificates were issued during this reporting period.

Notifications to the Attorney-General

Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney-General

In general the NSWPF was compliant in this regard, with the exception of some minor typographical errors.

The Attorney-General was provided with particulars of all warrants sought.

Section 52 Requirement to inform subject of surveillance

No orders were made requiring the subject of the surveillance to be informed.

Concluding Comments

For the period covered in this report the NSW Police Force was substantially compliant with the SD Act with the exception of the reporting requirements where the NSW Police Force was non-compliant.

It should be noted that the maximum penalty for failure to comply with ss. 44(1)(2) and (6) is 20 penalty units or imprisonment for a term of 12 months, or both.

Recommendation

NSWPF/7. Discussions take place between the NSW Ombudsman and NSW Police Force in relation to the failure to comply with s. 44.

NSW Crime Commission

During the reporting period 154 surveillance device files were inspected, 150 warrants were issued during this period and four applications were not proceeded with. There was also one application for the emergency use of devices and the application was approved.

We were satisfied that the NSW Crime Commission had generally complied with its obligations under the Act.

Compliance with obligations relating to the keeping of documents, reporting and notification

Warrants

Section 17 Applications for a surveillance device warrant

All 150 applications were made to eligible Judges. No applications were made to eligible Magistrates in the case of applications for a surveillance device authorising the use of a tracking device only.

Section 18 Remote Application

There were no remote applications made.

Section 22 Extension and variation of surveillance device warrant

Sixteen (16) warrants were varied or extended.

Section 23 Revocation of surveillance device warrant

There were 10 revocations during the reporting period.

Section 24 Discontinuance of use of surveillance device under warrant

Section 24 of the SD Act requires the use of a surveillance device to be discontinued as soon as practicable after the chief officer of the law enforcement agency is satisfied that the use of the device is no longer necessary.

All warrants which had been used were discontinued in a timely manner. Some warrants were never used and were subsequently revoked.

Section 25 Application for retrieval warrant

There were no applications for a retrieval warrant.

Section 26 Remote application

There were no applications for a retrieval warrant.

Section 30 Revocation of retrieval warrant

There were no applications for a retrieval warrant.

Emergency Authorisations

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

There was one use of surveillance device during the reporting period.

Section 32 Emergency authorisation – continued use of surveillance devices in participating jurisdiction

There was no emergency use of surveillance device warrants in participating jurisdictions.

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

One application was made and subsequently approved

Compliance and monitoring

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

While protected information was obtained through the use of surveillance devices, the information may be used in the future and the records of each use, communication and publication will be inspected in the future.

Section 41 Dealing with records obtained by use of surveillance devices

The Commission has established guidelines for dealing with protected information. Protected information is stored in the Commission premises with those officers authorised to deal with it.

There were no destructions carried out of protected information at the time of these inspections.

Section 44 Reports to eligible Judge or eligible Magistrate and Attorney-General

All reports were provided to the eligible Judge and Attorney-General within the time specified in the warrant and the reports contained all the required information, with the following exception: four reports relating to the same operation were delayed by 10 days due to an administrative error.

Section 47 Register of warrants and emergency authorisations

The Act requires the chief officer of the law enforcement agency to keep a register of warrants and emergency authorisations. The register is required to specify certain particulars.

The register of warrants contained all the particulars required and was accurate.

Evidentiary Certificates

Section 50 Provision for the issue of evidentiary certificates

No evidentiary certificates were issued during this reporting period.

Notifications to the Attorney-General

Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney-General

Section 51 notifications were provided in relation to all warrant applications. The notifications contained the relevant information required.

Section 52 Requirement to inform subject of surveillance

No orders were made requiring the subject of the surveillance to be informed.

Concluding Comments

For the reporting period the NSW Crime Commission was compliant with the SD Act.

Recommendations

No specific recommendations are made.

Independent Commission Against Corruption

During the reporting period five surveillance device files were inspected and all warrants were granted.

We were satisfied that the Independent Commission Against Corruption had generally complied with its obligations under the Act.

Compliance with obligations relating to the keeping of documents, reporting and notifications

Warrants

Section 17 Applications for a surveillance device warrant

Four applications were made to eligible Judges. One application was made to a Magistrate for a surveillance device authorising the use of a tracking device only. It was subsequently ascertained that this Magistrate was not declared as an eligible Magistrate under the Act and consequently the warrant was invalid and not used.

Due to an oversight the application form in relation to ICAC5/2011 was not dated.

Section 18 Remote Application

There were no remote applications made.

Section 22 Extension and variation of surveillance device warrant

There were no variations or extensions to the warrants issued.

Section 23 Revocation of surveillance device warrant

There were three revocations during the reporting period.

Section 24 Discontinuance of use of surveillance device under warrant

Three surveillance devices which were revoked were also discontinued.

Section 25 Application for retrieval warrant

No applications were made for retrieval warrants.

Section 26 Remote application

No remote applications were made for retrieval warrants.

Section 30 Revocation of retrieval warrant

No retrieval warrants were issued and consequently none were revoked.

Emergency Authorisations

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

There were no emergency uses of surveillance devices.

Section 32 Emergency authorisation – continued use of surveillance devices in participating jurisdiction

There was no emergency use of surveillance device warrants in participating jurisdictions.

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

There were no emergency uses of surveillance devices.

Compliance and monitoring

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

While protected information was obtained through the use of surveillance devices, records of each use, communication and publication were recorded appropriately.

Section 41 Dealing with records obtained by use of surveillance devices

The Commissioner has established guidelines for dealing with protected information. The protected information is stored on the Commission premises and restricted to those authorised to deal with it.

There were no destructions carried out of protected information at the time of these inspections.

Section 44 Reports to eligible Judge or eligible Magistrate and Attorney-General

All reports were provided to the eligible Judge and Attorney-General within the required time frame and all reports contained the required information.

Section 47 Register of warrants and emergency authorisations

The Act requires the chief officer of the law enforcement agency to keep a register of warrants and emergency authorisations. The register is required to specify certain particulars.

The register of warrants contained all the particulars required and was accurate.

Evidentiary Certificates

Section 50 Provision for the issue of evidentiary certificates

No evidentiary certificates were issued during this reporting period.

Notifications to the Attorney-General

Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney-General

All notifications were provided to the Attorney-General in relation to each application and contained all the required particulars.

Section 52 Requirement to inform subject of surveillance

No orders were made requiring the subject of the surveillance to be informed.

Concluding Comments

For the reporting period the Independent Commission Against Corruption was compliant with the SD Act.

Recommendations

No specific recommendations are made.

Police Integrity Commission

During the reporting period two new surveillance device warrants were applied for and granted.

We were satisfied that the Police Integrity Commission had generally complied with its obligations under the Act.

Compliance with obligations relating to the keeping of documents, reporting and notifications

Warrants

Section 17 Applications for a surveillance device warrant

Both applications were made to eligible Judges. No applications were made to eligible Magistrates in the case of applications for a surveillance device authorising the use of a tracking device only.

Section 18 Remote Application

There were no remote applications made.

Section 22 Extension and variation of surveillance device warrant

Both of the warrants issued during this reporting period were extended.

Section 23 Revocation of surveillance device warrant

There were no revocations during the reporting period.

Section 24 Discontinuance of use of surveillance device under warrant

There were no situations where the use of any surveillance device was discontinued during the reporting period and therefore no requirement to seek revocations of any warrants.

Section 25 Application for retrieval warrant

No applications were made for retrieval warrants.

Section 26 Remote application

No remote applications were made for retrieval warrants.

Section 30 Revocation of retrieval warrant

No retrieval warrants were issued and consequently none were revoked.

Emergency Authorisations

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

There were no emergency uses of surveillance devices.

Section 32 Emergency authorisation – continued use of surveillance devices in participating jurisdiction

There was no emergency use of surveillance device warrants in participating jurisdictions.

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

There were no emergency uses of surveillance devices.

Compliance and monitoring

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

While protected information was obtained through the use of surveillance devices, the records of each use, communication and publication are contained in a register for this purpose.

Section 41 Dealing with records obtained by use of surveillance devices

The Commissioner has established guidelines for dealing with protected information. The protected information is stored on the Commission premises and restricted to those authorised to deal with it.

There were no destructions carried out of protected information at the time of these inspections.

Section 44 Reports to eligible Judge or eligible Magistrate and Attorney-General

There were no reports due to be provided to the Attorney-General or Eligible Judge during the reporting period.

Section 47 Register of warrants and emergency authorisations

The Act requires the chief officer of the law enforcement agency to keep a register of warrants and emergency authorisations. The register is required to specify certain particulars.

The register of warrants contained all the particulars required and was accurate.

Evidentiary Certificates

Section 50 Provision for the issue of evidentiary certificates

No evidentiary certificates were issued during this reporting period.

Notifications to the Attorney-General

Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney-General

All notifications were provided to the Attorney-General in relation to each application and contained all the required particulars.

Section 52 Requirement to inform subject of surveillance

No orders were made requiring the subject of the surveillance to be informed.

Concluding Comments

For the reporting period the Police Integrity Commission was compliant with the SD Act.

Recommendations

No specific recommendations are made.