

 11/11/03  
LAID UPON THE TABLE OF THE HOUSE  
THE CLERK OF THE PARLIAMENT

*Tabled by the  
Premier  
11/11/03*



SIXTH ANNUAL REPORT OF THE  
PUBLIC INTEREST MONITOR  
DELIVERED PURSUANT TO THE  
*POLICE POWERS AND RESPONSIBILITIES ACT 2000 &  
THE CRIME AND MISCONDUCT COMMISSION ACT  
2001*

For the period 1 July 2002 to 30 June 2003.

## **1. Public Interest Monitor and Deputy Public Interest Monitors**

The function of the Public Interest Monitor (PIM) and the Deputy PIMs, in broad terms, is to assist in the process of balancing two competing expectations. The first is the community expectation that modern investigative agencies will have appropriate powers and technology available to them in combating contemporary crime. This will be increasingly so in the more dangerous world in which we now live since the escalation of terrorist activities against Australia and other nations. The second expectation is that the erosion of fundamental rights of the individual that the granting of such powers necessarily involves will be minimised to the greatest extent possible by ensuring that the process of applying for, approving and using those powers is carried out strictly in accordance with the restrictions laid down by the Parliament.

Queensland is the only state within the Australian Commonwealth to establish the role of the PIM.

## **2. Leaders Summit on Terrorism and Multijurisdictional Crime**

The Standing Committee of Attorneys-General and Australasian Police Ministers Council Joint Working Group on National Investigation Powers established a joint working group to prepare a working paper on cross border investigative powers for law enforcement bodies. In February 2003 the group published a discussion paper entitled *Cross-boarder Investigative Powers for Law Enforcement* which included draft model legislation to facilitate cross boarder investigations including, relevantly for the PIM, applications for covert surveillance warrants. The role of an entity similar to the PIM was canvassed during the meetings of the Joint Working Group and in the discussion paper.

I, in my role as the Queensland PIM, forwarded a submission to that group outlining the role of the PIM in Queensland and the benefits such a role could play in the national scheme. This submission included a copy of my 2002 annual report to the Legislative Assembly of Queensland which sets out in detail the legal issues involved in applications for covert surveillance warrants and the approach taken by myself and my deputies to these applications. This submission is available online on the Victorian Governments website at [www.justice.vic.gov.au](http://www.justice.vic.gov.au) [follow the links to the Cross Boarder Investigative Powers for Law Enforcement Discussion Paper and the tabs for the submission of the Qld Public Interest Monitor].

One issue raised in the discussion paper is that of reporting on the use of surveillance devices annually to the various Commonwealth, State and Territory parliaments. The Joint Working Group suggested [in Clause 35 of the model legislation] that, in addition to the usual matters that are presently reported to the PIM in Queensland, there be also included in an annual report by the Chief Officer of the law enforcement agency details of:

- The number of arrests made on the basis of or partly on the basis of information obtained by the use of surveillance devices.

- The number of prosecutions that were commenced during that year in which information obtained by the use of a surveillance device was given in evidence, and the number of those prosecutions where a person was found guilty of an offence
- Any other information relating to the use of surveillance devices and the administration of the model legislation that the relevant Minister considers relevant.

The Working Group observed that

‘these statistics do provide some basis for assessing the effectiveness of surveillance device use in prosecuting crime which is why the obligation [on the Chief Officer of a Law Enforcement Agency] to provide the information has been included’

In my previous reports to the Parliament I have suggested that a longitudinal study be conducted by the PIM to determine the real outcome of the use of surveillance devices in the Criminal Justice System including arrest, prosecution and appeal. I make that recommendation again this year noting that these details are not presently reported by the various agencies in Queensland. They should, in my view, be provided.

### **3. Guidelines for the PIM under the *Crime and Misconduct Act 2001***

Section s 327 of the *Crime and Misconduct Act 2002* provides that the Minister *may* issue guidelines about how the public interest monitor and deputy public interest monitor are to perform their functions.

During the year discussions took place between advisors to the Premier and myself and my deputies about how such guidelines could be implemented. It was argued by myself and my deputies that, in view of the rigorous way in which we already approach our functions, any attempt at a regimented system of guidelines would only hinder rather than enhance the monitoring role that we played under the respective legislative frameworks. The cogency of these arguments appear to have been accepted and no such guidelines have been implemented to date.

### **4. Police Powers and Responsibilities Act Review Committee**

I was, as PIM, invited to join a committee set up by the Minister for Police and Corrective Services to review the provisions of the *Police Powers and Responsibilities Act 2000*. This committee met throughout 2002 and 2003 and reviewed and debated many suggested amendments to the *Police Powers and Responsibilities Act 2000* and made recommendation thereon to the Minister. I took the opportunity to make both written and oral submissions to the committee about matters that affected the way the regime affecting the issue of covert surveillance warrant and the reporting thereon was carried out under the act. These submissions were based upon issues raised by Judges of the Supreme Court with me through the Chief Judge Administrator as well as issues that I had identified in the course of discharging my functions as the PIM.

The outcome of the recommendations of the committee are still pending.

## **5. The Parliamentary Crime and Misconduct Committee Review of the Crime and Misconduct Commission**

During the year the Parliamentary Crime and Misconduct Committee (PCMC) carried out a review of the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001*. I was invited to make a submission to the committee's public hearings. I, as PIM, made both oral and written submissions to the committee about issues that I thought affected the operations of the Crime and Misconduct Commission in relation to the functions and duties of the PIM. The PCMC's report is still pending.

## **6. Functions and Responsibilities of the PIM**

Under s.159 of the *Police Powers and Responsibilities Act 2000* (the PPR Act) the functions of the PIM are fourfold:

- i. **to monitor compliance** by police officers with Part 2 (Surveillance powers)
- ii. **to appear at any hearing** of an application to a Supreme Court judge or magistrate for a surveillance warrant or covert search warrant to test the validity of the application and for that purpose:
  - present questions for the applicant to answer and
  - to question and cross examine any witness
  - make submissions on the appropriateness of granting the warrant
- iii. **to gather statistical information** about the use and effectiveness of surveillance warrants and covert search warrants
- iv. **whenever the public interest monitor considers it appropriate to give to the commissioner a report on non compliance** by police officers with (part 2: Surveillance powers).

### ***The relevant covert powers available to the Queensland Police Service.***

Part 2 of the PPR Act permits a police officer of the rank of inspector to make application to a Supreme Court judge for the use of a surveillance device which can include:

- a listening device,
  - visual surveillance device or
  - tracking device.
- or a combination of these.

This is usually only in the case where there are grounds for believing a person is involved in a **serious indictable offence** .

There is also the opportunity to obtain retrospective approval for the use of such devices but only if there were emergent circumstances justifying the bypassing of an application to a judge eg a siege or, increasingly relevantly, a terrorist incident.

An application may also be made to a magistrate for a tracking device that does not involve covert entry to a building. This is available whenever there

are reasonable grounds for believing that a person is involved in an **indictable offence**.

Also application may be made to a Supreme Court judge for a covert search warrant but only if there are grounds for believing that the search will reveal evidence of **organised crime** which involves the additional criteria that there is **an ongoing criminal enterprise to commit serious criminal offences in a systematic way involving a number of people and substantial planning and organisation**.

Thus there are three different thresholds that must be satisfied under part 2 in order to obtain the various warrants.

A register of these covert acts must be kept pursuant to Division 2 of Part 2 of the act.

The surveillance powers in Part 2 of the PPR Act are utilised not only by the Queensland Police Service (QPS) but also police officers who are members of the Australian Crime Commission (ACC) [formerly the National Crime Authority (NCA)] and the Queensland Crime and Misconduct Commission.

### ***The relevant covert powers available to the Queensland Crime and Misconduct Commission***

The *Crime and Misconduct Act 2001* (CMC Act) amalgamated the former Criminal Justice Commission and the Queensland Crime Commission into one organization called the Crime and Misconduct Commission (QCMC). New covert investigative powers were incorporated into Part 6 of the Act. These provisions commenced on 1<sup>st</sup> January 2002.

The CMC has, relevantly, both a *misconduct function* and a *major crime function* however, the covert powers that relate to each are different. For a crime investigation the CMC may apply for a listening device, a visual surveillance device, a tracking device or any combination thereof or a data surveillance device. Also the CMC may apply for a covert search warrant in the case of a major crime investigation.

However, for a misconduct investigation the CMC may only apply for a listening device warrant. The CMC is however able to use the services of serving police officers who are member of the CMC who have the usual powers under the PPRA and thus can apply for tracking device warrants. These powers were used in a misconduct investigation during the year.

Under Division 2 of Part 6 of the CMC Act an application may be made to a Supreme Court Judge for either a Class A or Class B surveillance warrant. Applications for surveillance warrants or covert search warrants may be made by an authorised CMC officer with the approval of the chairperson of the CMC. However in all cases the issuing judge or magistrate has to be satisfied that there are reasonable grounds for believing that the person is involved in either **misconduct** or **major crime** and is or is likely to be in the relevant place or, in the case of a covert search, that there is evidence of **major crime**

*hearing of public submissions on the review of the Crime and Misconduct Commission earlier this year.*

Such a reporting process was not thought to be necessary in the case of non compliance under the PPR Act as one of the primary functions of the CMC is the investigation of misconduct in the Qld Police Service and either the Police Commissioner or the PIMs can refer serious matters of non compliance to the CMC directly.

On the other hand in the case of non compliance by CMC officers under the CMC Act the present arrangements leave it to the CMC to forward any reports of non compliance to the PCMC. This situation is undesirable and should be rectified.

In the case of non compliance by the members of the Police Service it has been my practice to report such matters to the Commissioner of Police only. This process has, during the year, proved less than satisfactory. It will therefore sometimes be necessary to report matters to the CMC who have both the powers and resources that I lack to follow through what I consider to be unsatisfactory outcomes of my reporting to the Commissioner of Police. I will keep this matter under review in the future.

## **8.The covert powers available to the Australian Crim Commission (ACC) [formerly the NCA]**

The NCA changed its name to the ACC in January 2003. The ACC utilises a range of powers under the laws of the Commonwealth and other states not involving the PIM. The only relevant powers involving the PIM are those under the PPR Act as outlined above.

The only material difference is that the ACC, unlike the QPS and the CMC does not have to keep a register of covert acts under the PPR Act.

## **9.The Monitoring Function**

There are two phases to the monitoring function of the PIM.

The first phase addresses the process before the application is made to the issuer. The second addresses the process involved in monitoring the use of the devices following the issue of the warrant.

### *Monitoring before issue of a warrant.*

The approach of the PIMs to this aspect of the process is shaped by the dynamics of the issue and use of a covert surveillance device warrants. The issue of a warrant authorises police or others to do an act that would otherwise be illegal.

At the heart of the process is the balancing of two competing interests. On the one hand there is a legitimate expectation of Queensland citizens that their rights to property and privacy will be protected. On the other hand there is the legitimate need of modern society to have confidence that law enforcement bodies are properly equipped to deal with the sophistication of crime in the third millennium.

Although it is clear that the issue of surveillance warrants by a judge or magistrate is an administrative function nevertheless judges must act judicially in that they must act in a just and fair manner and with judicial detachment.

There are two practical issues that inform the PIMs' approach to the monitoring of the pre application stage.

The first issue is that, as observed by Kirby J in *Ousley v R* (1991) 192 CLR 69, 'even a conscientious Supreme Court judge, busily performing such an administrative function amidst pressing judicial duties might, [not address the requirements as the act requires]. The PIMs' role is to assist the issuer in this regard.

The second issue is the application process itself. The practical aspects of a covert surveillance warrant application prompted Brennan J and Justices Deane, Dawson and Toohey in *Grollo* to observe:

'The decision to issue a warrant is, for all practical purposes, an unreviewable in camera exercise of executive power to authorise a future clandestine gathering of information.'

Those practical aspects are:

- the application for an warrant is made in the absence of the suspected party
- the very issue of the warrant and the identity of the judge who issued it are not disclosed
- its execution may go undetected by the person against whom or against whose interests the warrant is issued
- (except in Qld in the case of covert search warrants) there is no return made on the execution of the warrant which permits a determination of its lawfulness, a review of its due execution and a disposition of the fruit of its execution
- because of the secrecy necessarily involved in applying for and obtaining a warrant no records are kept which would permit judicial review of a judge's decision to issue a warrant (other than the affidavit of the applicant)
- no reasons are given for such a decision.

Where the product of a covert surveillance device is sought to be used during a criminal trial the trial judge is able to collaterally review the warrant. If it is invalid different courses will follow according to the nature of the product obtained. Where the product of a covert surveillance device is the recording of private conversations that evidence is inadmissible by virtue of s 46 of the *Invasion of Privacy Act 1971* (*R v Vickery* (1996) 1 Qd R 335). In the case of product that is 'real' evidence such as visual images or the tracking of positions of a vehicle a discretion will arise as to whether the judge should allow otherwise admissible evidence obtained under the warrant to go to the jury on the grounds that it has been unlawfully obtained (*Bunning v Cross* (1978) 141 CLR 54). However this review at trial is quite limited. The High Court has drawn a distinction between attacking the validity of a warrant and attacking the 'legal propriety' of issuing it. The former attack is generally restricted to jurisdictional error revealed on the face of the warrant document

itself and is all that is available during the trial process (*McArthur v Williams* (1936) 55 CLR 324; *Murphy v R* (1989) 167 CLR 94 *Grollo v Palmer*). The form of the warrants generally issued in Queensland are unlikely to be attacked because of any jurisdictional error on their face.

Attacks based on the 'legal propriety' of issuing the warrant involve challenging the sufficiency of the grounds for granting the warrant and may involve an examination of the sufficiency, nature or character of the materials used at application stage or demonstrating some procedural or substantial error on the part of the issuer. Such an attack is made during judicial review otherwise than during the trial process.

Two matters are immediately relevant. As observed by Dowsett J in *In re a Solicitor* (1987) 2 Qd R 710 at 713 if incriminating information is obtained the subject of the surveillance will usually be more concerned with defending themselves in the criminal proceeding and the cost of litigation will often deter such judicial review. That is not to say that such attacks have not successfully taken place (see eg *Heery v CJC* [2000] QCA 511 (15 December 2000); *Barbaro v DPP* [1999] NSWSC 1338 (26 Nov 1999 O'Keefe J).

Also the opportunity for judicial review is limited by the absence of reasons for the issue and of a record other than the affidavit of the applicant.

The Full Federal Court has declined to judicially review the decision of a Federal Court judge to issue a warrant pursuant to the *Telecommunications (Interception) Act*. In doing so the Full Court recognised the "extremely wide" power of a trial judge in criminal proceedings to exclude prejudicial material (*Flanagan v Commissioner of the Australian Federal Police* (1996) 60 FCR 149 at 212 noted by McHugh J in *Ousley v R*). However, as observed that power appears to be quite limited.

Given the difficulties in practice of going behind the face of the warrant the fundamental rights of the individual are therefore best protected by attempting to ensure the process is as correct as possible at the application stage. That is not to say that the PIMs are in some way an advocate for the absent party. Rather it is to recognise a practical limitation of the process that impacts on the balancing process.

Because we generally have a longer opportunity to consider and test the materials against the criteria in the relevant acts than does the issuer and for the reasons outlined above we have to be vigilant that the material are carefully scrutinised before the application and any deficiencies are explored. Importantly, many operations by the agencies are ongoing and involve a number of successive applications. These more often than not are brought before different issuers. We are able, because of our post application monitoring role outlined below, to develop an enhanced understanding of the material used to support the successive applications and assess its relevance.

At this point we adopt an attitude to the application or particular aspects of it. Our attitude to the application may be:

- opposition
- support
- support in a modified form

- neutral, outlining any issues relevant to the balancing process

We discuss the materials with the legal officers acting for the various agencies and where necessary seek further and better particulars, even in appropriate circumstances listening to relevant recorded materials used to support the application. We also indicate our views and any concerns that we have about the materials. It has been our experience during this process that the representatives of the various agencies generally proceed in a cooperative and professional manner doubtless mindful of their underlying duty to the court.

During this process, where the PIMs have resolved to adopt an attitude of opposition to the application or particular aspects of it, the matter has often been successfully determined during discussions with the legal representative without the need to make an application at all or by resolving those particular aspects prior to the application. In a number of cases, however, this has not been successful and the judicial officer has ultimately to determine the issue. This process also affords the PIMs the opportunity to crystallise for the issuer any important issues relevant to the criteria that must be addressed and the test that ultimately the issuer must be satisfied of.

The criteria that the issuer must consider under the PPR Act and now also the CMC Act are:

- *the nature and seriousness of the offence*
- *the likely extent of interference with the privacy of persons*
- *the extent to which issuing the warrant would help prevent, detect or provide evidence of the offence*
- *the benefits derived from any previous surveillance warrants*
- *the extent to which police officers have or can use conventional ways of investigation*
- *how much the use of conventional ways of investigation would be likely to help*
- *how much the use of conventional ways of investigation would prejudice the investigation*

After considering these matters and any submissions by the PIMs the issuer must be satisfied that there are reasonable grounds for believing the person has been, is or is likely to be involved in the relevant offence or major crime or misconduct, as the case may be, and is likely to be at the place the subject of the warrant.

#### *Monitoring after the issue of a surveillance device.*

Concerns have been expressed about the level of involvement of judicial officers in the investigative process. In *Ousley v R*, Gaudron J (citing *Grollo v Palmer* at 366-367, 380-381 and *Love v AG NSW* (1990) 169 CLR 307 at 322) expressed the view that the power to issue surveillance warrants “may impact upon the discharge of judicial functions in that judges may have to disqualify themselves from cases involving persons in respect of whom they have been provided information in the course of an application for the issue of a warrant”.

It is therefore important that justices not be involved in the investigative process to any greater extent than necessary. To achieve this end the

practice is, in cases other than the use of covert search warrants, to require as a condition of the warrant that the PIM be provided with a compliance affidavit within usually 7 days of the expiration of the warrant period. This affidavit must detail:

- compliance with the conditions of the warrant including the limits placed by the warrant on the use that can be made of any product of the device
- a summary of the information obtained under the warrant
- a log recording the date time and duration of all matters monitored by the device, the identity of the person monitoring, the number of persons involved in each matter and their identity

In addition the warrant provides that the PIM must be provided, if requested, a transcript of any recordings or translations made thereof.

It is necessary for the PIM to read all of the logs provided with the compliance affidavit and in some cases also to listen to parts of the recordings made in order to assess whether the warrant has been complied with.

During this process it is possible to both assess the compliance and also to develop an on going understanding of the effectiveness of the use of the devices to decide an attitude to applications for extension of use. Where non compliance is revealed by the affidavit a judgement has to be made as to whether it is appropriate to give a report to the relevant person or body under the legislation.

Where a covert search is authorised by the warrant the respective acts require that the search be videotaped if practicable. This video must be returned before the issuer together with anything seized during the search and proposals for dealing with those materials. The PIMs have adopted the practice of viewing all videos of covert searches to ensure the propriety of the search and to obviate the need for the issuer to view the video which in some cases will exceed an hour.

The concerns about unnecessary involvement by judicial officers in the investigative process expressed by the High Court are particularly apposite in the case of reports on covert searches. It may be better that such reports, like the reporting on compliance with surveillance warrants, be made back to the PIMs rather than to the issuing justice, with the PIMs being at liberty to apply for directions to a Supreme Court Judge in appropriate circumstances. This was one of the concerns of the Judges of the Supreme Court expressed to me through the Chief Judge Administrator that underpinned my submissions to the Police Powers and Responsibilities Act Review Committee for changes both to the *Police Powers And Responsibilities Act 2000* and the corresponding provisions in the *Crime and Misconduct Act 2001*.

## **10. Appearing at Hearings**

As previously outlined it is the PIMs' practice, prior to the application, to adopt an attitude based on the materials provided and the ongoing knowledge of the operation from the post application monitoring process.

This attitude may range from outright opposition to submissions on the more contentious aspects that we consider should exercise the mind of the issuer in terms of the matters that have to be considered.

Because of the consultation that takes place between the PIMs and the legal officers of the various agencies and the resultant comprehensive materials that are provided to the issuer it has been the exception to require a witness to be called and cross examined before the issuer.

It is our task to assist the issuer to focus on the relevant issues in each application against the matters that the legislation stipulates must be taken account of in the balancing process.

## **11. Statistical Information on the Use and Effectiveness of Warrants**

Assessing the effectiveness of surveillance warrants and covert searches has of necessity involved a degree of subjective judgement on our part. It has not been possible for us to determine the ultimate use to which most of the product of the various surveillance devices will be put. This will be determined to some extent by operational decisions, decisions to prosecute by Directors of Public Prosecution and so forth. In this regard see the discussion in 2 above and the recommendation below for a longitudinal study of the use of surveillance devices in the Criminal Justice System.

A surveillance warrant can be said to be "effective" in a number of ways. At one end of the spectrum direct evidence of a criminal activity may be revealed either as ongoing or by admission of past activity. There have been some examples of this during the course of the year.

At the other end of the spectrum the warrant may be effective in that it may inform and direct other investigative strategies such as physical surveillance and/or telephone interceptions [where the ACC (formerly the NCA)] is also involved) and/or call charge analysis of particular telephones and the like. There are also examples of this during the year.

There are also examples of the use of listening devices over a long period in which the most mundane and also intensely private but irrelevant conversations are overheard. Sometimes scattered amongst this morass of conversations may be snippets of relevant conversations that make the use of the warrant arguably "useful" in the context of the overall operation but not "effective" in the balancing of the cogency of the information obtained against the level of irrelevant private or confidential conversations captured.

This is broadly the approach that I have adopted in endeavouring to assess the effectiveness of the warrants issued in the relevant period.

### *The use of Telephone Interception product.*

The above discussion illustrates the clumsy and intrusive nature of general listening device product. In my experience, where the ACC or NCA have been involved and the use of telephone interception is utilised under other legislation, the outcome is far less intrusive than that where listening devices in private premises are used. The product tends to be more focussed, there is invariably less intensely private (often embarrassing) irrelevant conversations

captured and often the conversations, even though veiled, can more readily be seen to be relevant in the context of an investigation.

One other problem with surveillance devices is their susceptibility to technical failure. Thus sometimes they either don't work at all or are of very poor quality and much of the conversation is unintelligible. Sometimes it is simply impossible to install the devices. In these circumstances I have assessed the warrant as ineffective but have indicated the specific reason why.

It is also the case that the more sophisticated the criminal and their activities the less likely it is that they will openly discuss criminal activity in circumstances in which they can be overheard because of their knowledge of the possibility of the use of such devices. If the targeted person suspects that they are being eavesdropped upon they will sometimes make gratuitous self serving exculpatory statements.

In order to properly determine the effectiveness of the use of these warrants it would be very useful to do a longitudinal study of the use to which product of surveillance devices and covert searches is put not only in the particular operation in which they are utilised but also to found an arrest, as evidence in criminal proceedings, on judicial review and ultimately on appeal in the criminal justice system. I have already noted in 2 above the comments of the Joint Working Group on the usefulness of such statistics.

## **12. Statistical Analysis of Specific Applications.**

During the period 1 July 2002 to 30 June 2003 the following applications were made.

### **Queensland Police Service**

There were 52 applications by the Queensland Police Service as follows:

#### Operation 1

Application for a Class A Listening device surveillance warrant

Outcome: Ineffective

#### Operation 2

Application for a Class A listening device warrant

Outcome: Ineffective

#### Operation 3

Application for Class A visual and listening devices and Class B tracking device warrant

Outcomes:

House: Visual not installed; Listening ineffective

Vehicle 1: Listening ineffective; tracking effective

Vehicle 2: Listening not installed; tracking ineffective

#### Operation 4

Application for Class A listening device warrant

Outcome: Effective

#### Operation 5

Application for Class A Listening device warrant

Outcome: Ineffective

Operation 6  
Application for a Class B Tracking device warrants  
Outcome: Effective

Operation 7  
Application for a Class B Tracking device warrant  
Outcome: Effective in that useful data obtained to track addresses

Operation 8  
Application for a Class A visual and listening device warrant and Class B tracking device warrant  
Outcome:  
House: Visual not installed; listening effective  
Vehicle 1: Listening not installed; tracking effective  
Vehicle 2: Devices not installed  
Vehicle 3: Listening ineffective; tracking effective

Operation 9  
Application for a Class A listening device warrant  
Outcome: Ineffective

Operation 10  
Application for a Class B tracking device warrant  
Outcome: Ineffective

Operation 11  
Application for a Class B tracking device warrant  
Outcome: Ineffective

Operation 12  
Application for a Covert Search warrant (see 13 below)  
Outcome: Ineffective (Wrong place searched)

Operation 13  
Application for a Covert Search warrant (see 12 above)  
Outcome: Highly effective

Operation 14  
Application for a covert search warrant and a Class Tracking device warrant  
Outcome : Search Ineffective and tracking device ineffective.

Operation 15  
Application for a Class A listening device warrant  
Outcome: Ineffective

Operation 16  
Application for a Class A Listening device warrant  
Outcome: Minimally effective

Operation 17  
Application for a Class A Listening and Visual Surveillance device warrant and a Class B tracking device warrant  
Outcome: Not Installed

Operation 18  
Application for a Class B tracking device warrant  
Outcome: Not installed

Operation 19  
Application for a Class A Listening device warrant  
Outcome: Ineffective

Operation 20  
Application for a Class B tracking device warrant  
Outcome: Effective

Operation 21  
Application for a Class A Listening device warrant  
Outcome: Highly effective

Operation 22  
Application for a Class B Tracking device warrant  
Outcome: Effective

Operation 23  
Application for a Class B Tracking device warrant  
Outcome: Highly Effective

Operation 24  
Application for a Class B tracking device warrant  
Outcome: Ineffective

Operation 25  
Application for a Class B tracking device warrant  
Outcome: Could not be installed

Operation 26  
Application for a Class B tracking device warrant  
Outcome: Could not be installed

Operation 27  
Application for a Class A listening device warrant  
Outcome: Effective

Operation 28  
Application for a Class B tracking device warrant  
Outcome: Effective

Operation 29  
Application for a Class B tracking device warrant  
Outcome: Effective

Operation 30  
Application for a Class A tracking device warrant  
Outcome: Ineffective

Operation 31  
Application for a Class B tracking device warrant  
Outcome: Ineffective

Operation 32  
Application for a Class B tracking device warrant  
Outcome: Not installed

Operation 33  
Application for a Class B tracking device warrant  
Outcome: Effective

Operation 34

Application for a Class A visual, listening and tracking device warrant

Outcome: Visual device not installed. Listening and tracking devices effective

Operation 35

Application for a Class A visual, tracking and listening device warrant

Outcome: Visual device and tracking devices not installed.

Listening device: Ineffective

Operation 36

Application for a Class B tracking device warrant

Outcome: Effective

Operation 37

Application for a Class B tracking device warrant

Outcome: Effective

Operation 38

Application for a Class A listening and tracking device warrant

Outcome:

Listening and tracking device in vehicle 1 not installed

Listening and tracking device in vehicle 2: Ineffective

Listening device in house: Ineffective

Operation 39

Application for a Class A listening and tracking devices in cars

Outcome: Listening device in Vehicle 1 not installed, tracking device effective

Listening and tracking devices in Vehicle 2: Effective

Operation 40

Application for Class A listening device warrant

Outcome: Highly effective

Operation 41

Application for a Class B tracking device warrant

Outcome: Not installed

Operation 42

Application for a Class B tracking device warrant

Outcome: Effective

Operation 43

Application for a Class B tracking device warrant

Outcome: Effective

Operation 44

Application for a Class B tracking device warrant

Outcome: Effective

Operation 45

Application for a Class B tracking device warrant

Outcome: Ineffective

Operation 46

Application for a Class A listening and tracking device warrant

Outcome: Both highly effective

Operation 47  
Application for a Class B tracking device warrant  
Outcome: Not installed

Operation 48  
Application for a Class A visual and listening device warrant  
Outcome: Both highly effective

Operation 49  
Application for a Class A listening and tracking device warrant  
Outcome: listening device application refused, tracking device effective

Operation 50  
Application for a Class A listening device warrant  
Outcome: Ineffective

Operation 51  
Application for a Class A listening device warrant  
Outcome: Effective

Operation 52  
Application for a Class A listening device warrants  
Outcome: Listening device in house: Ineffective  
Listening device in Vehicle: Effective

**Crime and Misconduct Commission**  
**Misconduct Investigation Function applications**  
There were 3 Applications by the CMC as follows:

Operation 1  
Application for Class A Listening Device warrant  
Outcome: Effective

Operation 2  
Application for a Class A Listening device warrant  
Outcome: Ineffective

Operation 3  
Application for a Class A listening device warrant  
Outcome: Effective

**Crime and Misconduct Commission**  
**Crime Investigation Function applications**

There were 16 Applications by the CMC as follows:

Operation 1  
Application i for a Class A Listening and tracking Device warrant.  
Listening device in house 1 Outcome: Ineffective  
Listening device in house 2 Outcome: Ineffective  
Listening and tracking device in vehicle Outcome: Ineffective  
Application ii [as above]: Refused

Operation 2  
Application for a Class A listening device warrant  
Outcome: Ineffective

### Operation 3

Application i for a class A listening and tracking device warrant

Outcome: both ineffective

Application ii for a Class A Visual and Listening device warrant

Outcome: Visual device not installed; listening device malfunctioned

Application iii for two covert search warrants

Outcome: Search A not executed; Search B Ineffective

Application iv for a Covert Search Warrant

Outcome: Ineffective

Application v for a Class B tracking device warrant

Outcome: Ineffective

Application vi for a Class A listening device warrant

Outcome: Ineffective

Application vii for a Class A listening device warrant

Outcome: Ineffective

Application viii for a Covert Search Warrant

Outcome: effective

Application ix for a Class A listening device warrant

Outcome Ineffective

Application x for a Covert Search Warrant

Outcome: Ineffective

Application xi for a Class A visual and listening device warrant

Outcome : Ineffective

Application xii for a Class A listening device warrant

Outcome: Ineffective

Application xiii for a Covert Search Warrant

Outcome: Ineffective

### **National Crime Authority/Australian Crime Commission**

There were 27 Applications by the NCA as follows:

#### Operation 1

Application i for a Covert Search warrant

Outcome: Effective

Application ii for a Covert Search warrant

Outcome: Effective

Application iii for a Class B tracking device warrant

Outcome: Ineffective

Application iv for a Class B tracking device warrant

Outcome: Effective

Application v for a Covert Search Warrant

Outcome: Ineffective

Application vi for a Class B tracking device warrant

Outcome: Ineffective

Application vii for a Covert Search Warrant

Outcome: Highly effective

Application viii for a Class B tracking device

Outcome: Effective

Application ix for a Class B tracking device warrant

Outcome: Effective

Application x for a Class B tracking device warrant

Outcome: Not installed

Application xi for a Class B tracking device warrant

Outcome: Not installed

Application xii for a Class B tracking device warrant

Outcome: Ineffective

Operation 2  
Application i for a Covert Search warrant  
Outcome: Ineffective  
Application ii for a Class A listening and tracking device warrant  
Outcome: Effective  
Application iii for a Class A listening and tracking device warrant  
Outcome: Effective  
Application iv for a Class A listening and tracking device warrant  
Outcome: Effective  
Application v for a Class A visual, listening and tracking device warrant  
Outcome: Visual device not installed  
Listening device effective  
Tracking device effective  
Application vi for a Covert Search Warrant  
Outcome: Partly effective  
Application vii for a Covert Search Warrant  
Outcome : Not executed  
Application viii for a Class A listening and tracking device warrant  
Outcome: Effective  
Application ix for a Class A listening and tracking device  
Outcome: Listening device faulty; tracking device effective  
Application x for a Covert Search warrant  
Outcome: Not executed  
Application xi for a Class A listening device warrant  
Outcome: Not Monitored  
Application xii for a Class A listening and tracking device warrant  
Outcome: Listening Device malfunctioned; Tracking device effective

Operation 3  
Application i for a Class A tracking device warrant  
Outcome: Effective

Operation 4  
Application i for a Class A listening device warrant  
Outcome: Effective  
Application ii for a Class A listening and tracking device warrant  
Outcome : Listening device ineffective Tracking device effective

### *Conclusion*

The above analysis demonstrates clearly that, on balance, the use of covert surveillance device warrants and covert search warrants is an effective investigative tool.

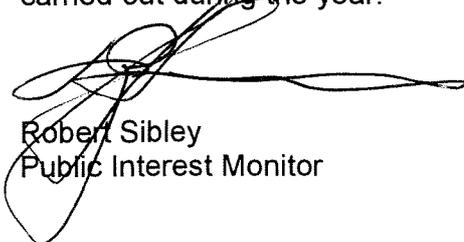
### **13. Dealing with sensitive materials**

There continues to be a need to address the way that the burgeoning secret materials are dealt with that are created as a result of applications for covert surveillance devices. I have made these observations in my previous reports to the Parliament and have repeated them in submissions to the PPRA Review Committee and the PCM Committee.

The practice at present is to seal the materials that ground the application, together with a copy of the warrant, in an envelope which is endorsed that it shall not be opened except by order of a judge of the Supreme Court. In the case of applications to Supreme Court judges the materials are sent to the registry of the court. The Chief Judge Administrator has also expressed to me concerns about the way these materials are dealt with. In the case of applications to Magistrates, the materials are kept in the individual Magistrates' safe. Often the materials are quite voluminous. They need to be kept for a long periods of time pending the completion of the investigation, committal, trial and the appeal process which has sometimes, in the case of covert warrants, gone to the High Court of Australia. Some sort of central secure 'registry' needs to be established with access only to those persons or bodies legitimately entitled thereto by statute. For example the materials of the CMC relating to misconduct investigations need to be kept separate from the CMC materials relating to major crime and that of other agencies because much of those misconduct investigation activities need to be kept confidential from members of the police service not directly involved.

#### **14. Conclusion**

I am able to report to the Parliament that the activities of the PIMs have continued to help ensure that the difficult task of balancing the public interest by issuers of covert surveillance warrants is carried out in a just and fair way and in accordance with the legislative requirements. Additionally I can report that the process of monitoring by the PIMs of compliance by the various investigative agencies with the respective statutes and with the specific conditions of surveillance warrants has been rigorously carried out during the year.



Robert Sibley  
Public Interest Monitor