



**Victorian Inspectorate Report to the Parliament of Victoria on
the Game Management Authority pursuant to s. 30Q of the
*Surveillance Devices Act 1999***

Report No. 2 for 2014-2015

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List of Abbreviations

CSG	Compliance Support Group (within DELWP)
DEDJTR	Department of Economic Development, Jobs, Transport and Resources
DELWP	Department of Environment, Land, Water and Planning
DEPI	Department of Environment and Primary Industries
GMA	Game Management Authority
IBAC	Independent Broad-based Anti-corruption Commission
SD Act	<i>Surveillance Devices Act 1999</i> (Vic)
VI	Victorian Inspectorate

INTRODUCTION

The *Surveillance Devices Act 1999* (SD Act) regulates the use of surveillance devices in the State of Victoria. The SD Act makes provision for warrants and emergency authorisations permitting the installation, use, maintenance and retrieval of surveillance devices by five State law enforcement agencies.¹ Use of surveillance devices in relation to private activity and private conversations is otherwise generally unlawful in Victoria.²

The SD Act imposes a regime of strict controls relating to the use of surveillance devices, including a requirement for agencies to make and keep records and documents and to destroy certain material when it is not likely to be further required for an authorised purpose. It also provides for the independent inspection of agency records and documents by the Victorian Inspectorate (VI). The VI inspects agency records, assessing statutory compliance and reporting compliance results to Parliament bi-annually. The involvement of the Public Interest Monitor³ in the warrant application process has added another level of scrutiny to the control and oversight regimes.

In accordance with statutory obligations⁴ set out in the SD Act, this report is submitted to the Parliament of Victoria with a copy provided to the Minister responsible for the SD Act, the Attorney-General. This report outlines the results of VI inspections conducted on the Game Management Authority (GMA) between 1 July 2014 and 30 June 2015.

The VI has implemented a new reporting regime and a separate report for each agency is now produced, whereas in the past a combined report dealing with all agencies authorised to use surveillance devices was produced.

FEATURES OF THE LEGISLATION

OBJECTIVES OF THE SD ACT

The primary purposes of the SD Act⁵ are to:

- regulate the installation, use, maintenance and retrieval of surveillance devices
- restrict the use, communication and publication of information obtained through the use of surveillance devices or otherwise connected with surveillance device operations
- establish procedures for law enforcement officers to obtain warrants or emergency authorisations for the installation, use, maintenance and retrieval of surveillance devices

¹ The *Surveillance Devices Act 1999* (SD Act) also permits the Australian Crime Commission (ACC) to use the provisions of the Act. Inspection of ACC records and documents is conducted by the Commonwealth Ombudsman pursuant to s. 55(2) of the *Surveillance Devices Act 2004* (Cth).

² The SD Act provides for certain exceptions at ss. 5, 6(2), 7(2), 8(2), 9(2), 9B(2)(b) and (c), 9C(2).

³ Established by the *Public Interest Monitor Act 2011*.

⁴ SD Act s. 30Q.

⁵ SD Act s. 1.

- create offences relating to the improper installation or use of surveillance devices
- impose requirements for the secure storage and destruction of records and for the making of reports to judges, magistrates and to Parliament in connection with surveillance device operations
- recognise (subject to the *Surveillance Devices Regulations 2006*) warrants and emergency authorisations issued in other jurisdictions authorising the installation, use and retrieval of surveillance devices.

AGENCIES PERMITTED TO USE SURVEILLANCE DEVICES

During the period under review, six state law enforcement agencies⁶ were permitted to use surveillance devices under the SD Act:

- Victoria Police
- Independent Broad-based Anti-corruption Commission (IBAC)
- Department of Environment, Land, Water and Planning (DELWP) - from 1 January 2015
- Department of Economic Development, Jobs, Transport and Resources (DEDJTR) - from 1 January 2015
- Department of Environment and Primary Industries - to 31 December 2014
- Game Management Authority (GMA)

During the period under report government departmental changes occurred. On 1 January 2015, DEPI ceased to exist, and two new departments were created and took over the functions of DEPI. As a result of this, the two divisions within the former DEPI which use the powers under the SD Act are now located in separate departments. The Compliance Support Group (CSG) now comes within the DELWP and Fisheries Victoria is now located in DEDJTR.

TYPES OF SURVEILLANCE DEVICES

The SD Act provides for the use of the following surveillance devices:⁷

- data surveillance devices
- listening devices
- optical devices
- tracking devices.

⁶ Law enforcement agency is defined in s. 3.

⁷ Surveillance device is defined in s. 3.

WARRANTS AND EMERGENCY AUTHORISATIONS

The SD Act provides for the issue of surveillance device warrants⁸ and retrieval warrants⁹ and in a limited range of circumstances for emergency authorisation¹⁰ of the use of surveillance devices. A warrant must be sought from a Supreme Court Judge, except in the case of an application for a tracking device only, where the application may be made to a magistrate. An emergency authorisation may only be granted by a senior officer of Victoria Police or the IBAC.¹¹

RECORDS, DOCUMENTS AND REPORTS REQUIRED BY THE SD ACT

The SD Act requires each agency to retain certain documents and to make certain records in connection with the use of surveillance devices. These requirements are set out fully in the Act.¹²

Each agency is required to report to the judge or magistrate who issued a warrant under the Act by a date specified in the warrant. The SD Act prescribes a number of matters that must be included in such reports.¹³ The chief officer of each agency is also required to report annually to the Minister¹⁴ in relation to the agency's use of surveillance devices.

SECURITY AND DESTRUCTION OF INFORMATION OBTAINED

The SD Act prescribes agency obligations to keep information obtained by means of a surveillance device secure¹⁵ and to undertake the destruction of such information¹⁶ when it is unlikely to be required for a permitted purpose.¹⁷

THE VICTORIAN INSPECTORATE

ROLE OF THE VI

The VI must, from time to time, inspect the records of Victorian law enforcement agencies with authority to use surveillance devices under a warrant or emergency authorisation to determine the extent of compliance with the Act.¹⁸ The SD Act requires the VI report to Parliament at six-monthly intervals (after

⁸ SD Act ss. 15 to 20.

⁹ Ibid ss. 20C to 20G.

¹⁰ Ibid ss. 25 to 30.

¹¹ Ibid ss. 25 and 26.

¹² Ibid ss. 30M, 30N and 30O.

¹³ Ibid s. 30K.

¹⁴ Ibid s. 30L.

¹⁵ Ibid s. 30H(1)(a).

¹⁶ Ibid s. 30H(1)(b).

¹⁷ Defined in SD Act ss. 30F and 30G.

¹⁸ Ibid s. 30P(1).

1 January and 1 July each year) on the results of each inspection under s. 30P and to give a copy of each report to the Minister at the same time as it is transmitted to the Parliament.¹⁹

THE POWERS OF THE VI UNDER THE SD ACT

For the purpose of an inspection pursuant to the SD Act the VI is provided with certain powers²⁰ to access agency premises, records and information and to require members of staff of the agency to provide information in their possession that the VI considers necessary and relevant to the inspection.

INSPECTION OF AGENCY RECORDS

The VI is obliged under the SD Act to inspect the records of the GMA from time to time to determine GMA's level of compliance with the SD Act. The GMA began operations on 1 July 2014 and is yet use the provisions under the SD Act. As the GMA did not have any records for the VI to review the biannual inspections were not undertaken. However the VI attended a meeting with the GMA in June 2015 to inform the GMA of the VI's role in assessing compliance and to discuss other relevant matters.

It is anticipated that once the GMA uses the provisions under the SD Act, the VI will apply the same inspection methodology as that used for DELWP and DEDJTR. This process includes examining the various documents,²¹ records,²² reports,²³ registers²⁴ and other relevant material held by GMA.

ACKNOWLEDGEMENT

The VI acknowledges the full cooperation of the GMA. Particular note is made of the ready assistance given to the VI by GMA staff who attended the meeting with the VI and provided information as required.

¹⁹ Ibid s. 30Q.

²⁰ Ibid s. 30P(2).

²¹ Ibid s. 30M.

²² Ibid s. 30N.

²³ Ibid s. 30K.

²⁴ Ibid ss. 30N and 30O.

NEXT REPORT

As required under the SD Act the next report on GMA's use of the provisions of the SD Act will be made after 1 January 2016.

A handwritten signature in black ink that reads "Robin Brett". The signature is written in a cursive style with a large initial 'R'.

Robin Brett QC
Inspector
Victorian Inspectorate