



**Victorian Inspectorate Report to the Parliament of Victoria on
the Department of Economic Development, Jobs, Transport
and Resources pursuant to s. 30Q of the *Surveillance Devices
Act 1999***

Report No. 2 for 2015-2016

September 2016

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List of Abbreviations

DEDJTR	Department of Economic Development, Jobs, Transport and Resources
DELWP	Department of Environment, Land, Water and Planning
GMA	Game Management Authority
IBAC	Independent Broad-based Anti-corruption Commission
PI	Protected information
PIM	Public Interest Monitor
PI register	Protected information register
SD Act	<i>Surveillance Devices Act 1999 (Vic)</i>
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 requirements 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 (PIM) in the warrant application process has added another level of scrutiny to the control and oversight regimes.

During the period under review, five state law enforcement agencies⁴ 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)
- Department of Economic Development, Jobs, Transport and Resources (DEDJTR)
- Game Management Authority (GMA)

In accordance with statutory obligations⁵ 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 of Fisheries Victoria, which is within DEDJTR. The report comments on the level of statutory compliance achieved by Fisheries Victoria and its law enforcement officers for the 2015-2016 reporting period.

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 Law enforcement agency is defined in s. 3.

⁵ SD Act s. 30Q.

FEATURES OF THE LEGISLATION

OBJECTIVES OF THE SD ACT

The primary purposes of the SD Act⁶ 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
- 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.

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.

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

⁶ SD Act s. 1.

⁷ Surveillance device is defined in s. 3.

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.

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

PROTECTED INFORMATION REGISTERS

For the purpose of this report, the term 'protected information' (PI) will (unless otherwise specified) be used to refer only to information obtained by means of a surveillance device, although the SD Act gives the term a wider definition.¹⁸ The SD Act limits and regulates the use, communication and publication of PI.¹⁹

Section 30N of the SD Act requires records to be kept of a number of matters relating to the use and communication of PI. Somewhat confusingly, the term 'register' is used by all agencies for the records (PI registers) kept by them for the purpose of s. 30N(c) - (e), although that section does not itself require a 'register'. The agency PI registers referred to in this report should not be confused with the required register of warrants and emergency authorisations maintained by each agency pursuant to s. 30O. The two are quite different documents.

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 SD Act s. 30D.

¹⁹ Ibid s. 30E.

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.²⁰ The SD Act requires the VI report to Parliament at six-monthly intervals (after 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.²¹

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 powers²² 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 Fisheries Victoria from time to time to determine Fisheries Victoria's level of compliance with the SD Act. As Fisheries Victoria did not have any records for the VI to review, the biannual inspections were not undertaken. However the VI attended a meeting with Fisheries Victoria staff in April, 2016 to discuss general compliance issues.

RECOMMENDATIONS

No formal recommendations were made in the previous report.

The VI does not make any formal recommendations within this report.

²⁰ Ibid s. 30P (1).

²¹ Ibid s. 30Q.

²² Ibid s. 30P (2).

NEXT REPORT

As required under the SD Act the next report covering DEDJTR use of the provisions of the SD Act will be made after 1 January 2017.

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

Robin Brett QC
Inspector
Victorian Inspectorate