



**Victorian Inspectorate Report to the Parliament of Victoria
pursuant to section 30Q of the *Surveillance Devices Act 1999***

Report No. 1 for 2017-2018

March 2018

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List of Abbreviations

DELWP	Department of Environment, Land, Water and Planning
GMA	Game Management Authority
IIU	Intelligence and Investigations Unit (within DELWP)
IBAC	Independent Broad-based Anti-corruption Commission
PI	Protected information
PI register	Protected information register
PIM	Public Interest Monitor
SD Act	<i>Surveillance Devices Act 1999 (Vic)</i>
SPU	Special Projects Unit (within Intelligence and Covert Operations Support at Victoria Police)
TPU	Technical Projects Unit (within Professional Standards Command at Victoria Police)
TSU	Technical Support Unit (within the Victoria Police)
VFA	Victorian Fisheries Authority
VI	Victorian Inspectorate

Inspection Outcomes Relating to Surveillance Device Records Held by Authorised Victorian Government Agencies during the First Half of 2017-2018

Introduction

In Victoria 5 State Government agencies are authorised to use surveillance devices under the *Surveillance Devices Act* (1999 (SD Act)). They are:

- Department of Environment, Land, Water and Planning (DELWP)
- Game Management Authority (GMA)
- Independent Broad-based Anti-corruption Commission (IBAC)
- Victorian Fisheries Authority (VFA)
- Victoria Police.

The legislation governing the above agencies requires that the Victorian Inspectorate (VI) inspect the records of the agencies in order to determine the level of statutory compliance achieved by them and their law enforcement officers. The VI prepares a biannual report of the work and activities of the agencies that relate to an inspection of records relating to the preceding 6 months. A copy of the report is provided to the Chief Officer of each agency and the Minister and is tabled in the Parliament of Victoria. This is done in accordance with statutory obligations¹.

In recent years the VI has submitted a separate report in respect of each agency. However the legislation permits the submitting of a report covering more than one agency, and in the interests of minimising duplication the VI has decided to submit a combined report on this occasion.

¹ SD Act section 30Q.

Executive Summary

The report comments on the level of statutory compliance achieved by each agency and its law enforcement officers for the first half of the 2017-2018 reporting period.

In summary the outcomes of those inspections are as follows:

DELWP

The VI only inspected one finalised warrant that ceased to be in force during the inspection period. The VI is pleased to report that DELWP demonstrated a high level of compliance in relation to its obligations under the SD Act in relation to Warrant Files, Register of Warrants, Investigator Records (PI Registers) and its obligations of annual reporting to the Minister (for the 2016-2017 year).

GMA

During the current period the GMA did not exercise any powers under the SD Act. The VI established that GMA was compliant in regards to its obligation of reporting to the Minister within the specified time.

IBAC

The recent VI inspection of IBAC registers, files and reports has demonstrated that IBAC staff have a clear understanding of their obligations under the SD Act. All records inspected were well maintained and fully compliant with statutory obligations. The VI is satisfied that IBAC has met all its reporting obligations as required under the SD Act. This result of complete compliance with nil errors highlights the excellent degree of knowledge and compliance of the SD Act by IBAC and its staff.

VFA

The VI inspected one SD warrant that had been granted. The file was found to be compliant. The Register of Warrants was deemed to be fully compliant. Reporting obligations by the VFA to the Minister (for the 2016-2017 year) were made in the specified time frame.

VICTORIA POLICE

During the recent inspection by the VI, Victoria Police registers were deemed to be well maintained and to contain all prescribed information. The Register of Warrants and Emergency Authorisations contains a large volume of information and 3 minor errors were detected. These errors were not considered significant. Victoria Police demonstrates an excellent degree of compliance with the SD Act.

Victoria Police staff demonstrated understanding and compliance in relation to all their reporting obligations, including an annual (2016-2017) report to the Minister.

Acknowledgement

The VI acknowledges the total cooperation of the chief officers and staff of the agencies with all aspects of the VI role in the inspection of their records.

Reporting

The VI's next report dealing with the work and activities of each of the 5 agencies is due as soon as practicable after 30 June 2018, following receipt of the Chief Officers second chief officer report (due no later than 31 August 2018).

A handwritten signature in blue ink that reads "Eamonn Moran". The signature is written in a cursive style.

Eamonn Moran PSM QC

Inspector

Victorian Inspectorate

Features of the Legislation

Objectives of the SD Act

The primary purposes of the SD Act² 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:³

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

Warrants and Emergency Authorisations

The SD Act provides for the issue of surveillance device warrants⁴ and retrieval warrants⁵ and in a limited range of circumstances for emergency authorisation⁶ 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 IBAC.⁷

² SD Act section 1.

³ Surveillance device is defined in section 3.

⁴ SD Act sections 15 to 20.

⁵ Ibid sections 20C to 20G.

⁶ Ibid section 25 to 30.

⁷ Ibid sections 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.⁸

Each agency is required to report to the judge or magistrate who issued a warrant to it 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.⁹ The Chief Officer of each agency is also required to report annually to the Minister¹⁰ in relation to the agency's use of surveillance devices.

Security and Destruction of Information Obtained

The SD Act prescribes the obligations of an agency to keep information secure which is obtained by means of a surveillance device,¹¹ and to destroy such information¹² when it is unlikely to be required for a permitted purpose.¹³

Protected Information Registers

For the purpose of this report, the term 'protected information' (PI) will be used to refer only to information obtained by means of a surveillance device, although the SD Act gives the term a wider definition.¹⁴ The SD Act limits and regulates the use, communication and publication of PI.¹⁵

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 purposes of sections 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 section 30O. The two are quite different documents.

⁸ Ibid sections 30M, 30N and 30O.

⁹ Ibid section 30K.

¹⁰ Ibid section 30L.

¹¹ Ibid section 30H(1)(a).

¹² Ibid section 30H(1)(b).

¹³ Defined in SD Act sections 30F and 30G.

¹⁴ SD Act section 30D.

¹⁵ Ibid section 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.¹⁶ The SD Act requires the VI to report to Parliament at 6-monthly intervals (after 1 January and 1 July each year) on the results of each inspection under section 30P and to give a copy of each report to the Minister at the same time as it is transmitted to the Parliament.¹⁷

The Powers of the VI under the SD Act

For the purpose of an inspection under the SD Act the VI is provided with certain powers¹⁸ 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

Methodology

This report addresses the results of inspections undertaken by the VI from 1 July 2017 to 31 December 2017. The agencies inspected were Victoria Police, IBAC, DELWP, VFA and GMA, and each inspection included examination of the various documents,¹⁹ records,²⁰ reports,²¹ registers²² and other relevant material held by the relevant agency. All records relating to all warrants were inspected; there was no sampling of records.

The VI has an established process for inspections whereby a warrant file relating to Victoria Police or IBAC is not inspected until reporting requirements under section 30K of the SD Act for the warrant have been completed. This practice means that there is no need for the VI's officers to return to warrant files on multiple occasions and enables a better assessment to be made of the level of statutory compliance achieved in respect of each warrant. DELWP, VFA and GMA records, on the other hand, are inspected even if the warrant is still current or reports have not been completed, as these agencies make only occasional use of the provisions of the SD Act.

In 2017-2018 each agency will have their warrant files and related investigator records inspected once in each half of the year.

¹⁶ Ibid section 30P(1).

¹⁷ Ibid section 30Q.

¹⁸ Ibid section 30P(2).

¹⁹ Ibid section 30M.

²⁰ Ibid section 30N.

²¹ Ibid section 30K.

²² Ibid sections 30N and 30O.

Assessing Compliance

Section 30P(1) of the SD Act requires the VI to inspect the records of each law enforcement agency to determine the extent of the agency's compliance with the Act. Where appropriate, further information may be sought from relevant law enforcement officers. The records and documents inspected for each warrant are considered against all of the agency's statutory obligations to the extent relevant to the particular warrant.

Compliance obligations include requirements relating to:

- the process for obtaining warrants
- the use of authorised surveillance devices
- the keeping of required records and documents
- restrictions on the use, communication and publication of PI
- restrictions on reporting information obtained by a surveillance device warrant
- the reports that must be made
- the security and destruction of PI obtained by means of a surveillance device.

In reporting the results of each inspection in the following sections of this report, it is not practicable to include comment on every compliance requirement under the SD Act. Comment is made, however, when a compliance issue has been identified or when there is some other particular reason to include it.

Inspection Results

The following sections of this report cover the results of the inspections carried out by the VI. Each agency is reported on separately.

Department of Environment, Land, Water and Planning

In accordance with the VI's obligations under the Surveillance Devices Act 1999, the VI inspected DELWP records to determine the level of compliance with the act.

Intelligence and Investigations Unit

The VI scheduled a visit to DELWP in November 2017 to inspect records and other documents relating to surveillance devices. The Intelligence and Investigations Unit (IIU) is the division within DELWP that uses powers under the SD Act.

In relation to warrant files the VI inspected one warrant that was finalised, or ceased to be in force during the period. All documents were present and no deficiencies were noted.

The register of warrants and the PI register (investigator records) held by the IIU held all required information and were deemed to be compliant at the time of inspection.

REPORT TO THE MINISTER

The VI established that DELWP was compliant with section 30L of the SD Act, with an annual report by the Secretary to the Minister covering the 2016-2017 year having been made within the specified time.

SUMMARY

The VI only inspected one finalised warrant that ceased to be in force during the inspection period. The VI is pleased to report the Department of Environment, Land, Water and Planning demonstrated compliance in relation to its obligations under the SD Act in relation to Warrant Files,

Game Management Authority

The GMA began operations on 1 July 2014 and is yet to use the provisions under the SD Act. Consequently no files were inspected by the VI during the reporting period.

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 the VFA. This process includes examining the various documents, records registers and other relevant material held by the GMA.

REPORT TO THE MINISTER

The VI established that GMA was compliant with section 30L of the SD Act, with an annual report by the Chief Executive Officer of GMA to the Minister covering the 2016-2017 year having been made within the specified time.

Independent Broad-Based Anti-Corruption Commission

The VI is very aware of the potential risks that even the most general and non-specific reporting on the work and activities of IBAC in conducting activities relating to surveillance devices may have. In view of this the VI does not intend to add any comments in regards to the work and activities of IBAC other than where statutory obligations have not been met.

Inspection Results

The first inspection of IBAC records for the 2017-2018 year was conducted in October 2017

WARRANT FILE RECORDS

Three surveillance device warrants were inspected, one of which was not executed. All matters were deemed compliant, with all required documents being held on file.

IBAC maintains an Operational Register for each operation and it was found to be compliant having contained all required details in the register for each operation.

SECTION 30K – REPORT TO JUDGE OR MAGISTRATE

In relation to section 30K of the SD Act (reports to judges or magistrates in relation to issued warrants) all reports inspected were assessed as compliant, having been made on time and containing all the prescribed information.

DESTRUCTION OF PI

Inspection of IBAC records concerning the destruction of Protected Information obtained under 2 warrants was undertaken. No compliance issues were detected.

ANNUAL REPORT TO THE MINISTER

The VI found that IBAC was fully compliant with the requirements of section 30L of the SD Act with an annual report by the Commissioner to the Minister covering the 2016-2017 year having been made within the specified time. The VI is satisfied with both the comprehensiveness and adequacy of the report provided by the IBAC Commissioner in respect of the period under report.

Summary

IBAC has shown a clear understanding of its obligations under the SD Act and maintains a very good process for managing surveillance device warrants files and operational registers. That no errors were detected in the warrant files or section 30K reports highlights the effectiveness of the continuous improvement processes that IBAC has established.

Victorian Fisheries Authority

The VI is obliged under the SD Act to inspect the records of the VFA from time to time to determine the level of compliance with the SD act. The first inspection of the VFA for the 2017-2018 year was conducted in October 2017.

Inspection of Agency Records and Documents

One SD warrant that had been granted the week prior to inspection was inspected. It was found to be fully compliant. The VFA was considered to be fully compliant regarding the maintenance of its Register of warrants as specified under section 30(O) of the SD Act.

ANNUAL REPORT TO THE MINISTER

The VI established that VFA was compliant with section 30L of the SD Act, with an annual report by the Chief Executive Officer to the Minister covering the 2016-2017 year being made within the time allowed.

SUMMARY

The VI only inspected one warrant under which activity had recently commenced. The VI is pleased to report the Victorian Fisheries Authority demonstrated compliance in relation to its obligations under the SD Act in relation to Warrant Files as a the date of inspection and all other SD Act obligations had been met.

Victoria Police

Two units within Victoria Police administer surveillance device and retrieval warrants and emergency authorisations granted under the SD Act. The Special Projects Unit (SPU) manages the majority of warrants for Victoria Police, while a small number of warrants are administered by the Technical Projects Unit (TPU) within Professional Standards Command (PSC), mainly for PSC investigations. These units operate independently of each other.

Inspection Results

The first Inspection of Victoria Police records for the 2017-2018 was conducted during September-October 2017.

Forty-seven SD warrant files were assessed over both units. The files inspected relate to warrants that cease to be in force between 1 January 2017 and 30 June 2017. Included was one retrieval warrant that ceased to be in force during the period under inspection. Fifteen of the 47 warrants were not executed.

The VI acknowledges the effective process, including liaison with investigators, to ensure that the PI Registers contain the necessary information. The effectiveness of this process that is in place is demonstrated by the inspection results.

For the period under review the VI requested certificates pertaining to 4 warrants and a copy of each evidentiary certificate relating to the warrants was made available at inspection, as required by section 36 of the SD Act.

WARRANT FILE RECORDS

Inspection of the register of Warrants and Emergency authorisation as required under section 30N(a)-(b) of the SD Act highlighted 3 minor errors that were not considered to be significant. Given the volume of information that is required to be recorded the VI anticipates that a minor level of human error will occur. Victoria Police was advised of these matters following the inspection.

SECTION 30K – REPORT TO JUDGE OR MAGISTRATE

In relation to section 30K of the SD Act (reports to judges or magistrates in relation to issued warrants) 47 reports inspected were assessed as compliant, having been made on time and containing all the prescribed information.

INVESTIGATOR RECORDS (PI REGISTERS)

SPU and TPU have electronic PI registers. Inspections of these registers took place at the respective SPU and TPU localities. Thirty-one Protected Information Registers were inspected. No errors were detected.

ANNUAL REPORT TO THE MINISTER

The VI established that Victoria Police was compliant with section 30L of the SD Act, with an annual report by the Chief Commissioner of Police to the Minister covering the 2016-2017 year being made within the time allowed.

Summary

Victoria Police has a well-established process for warrant file administration. It is once again pleasing to report that no matters of concern were identified during the warrant file inspections and this further highlights the effectiveness of the warrant file administration processes followed by both SPU and TPU.

The increased focus on PI register compliance is also reflected in the inspection results where no errors were detected for the first half of the reporting period. Reporting errors have also declined for the first 6 months of the reporting year.

Overall Victoria Police demonstrates an excellent degree of compliance with the SD Act demonstrating that their personnel have a clear understanding of their obligations under the Act. This is reflected in the results of the current inspection where, with the exception of 3 minor register errors, no errors have been detected.