

**VICTORIAN
INSPECTORATE**

Inspection Report:

Surveillance Devices Act 1999 (Vic)

Report by the Victorian Inspectorate on surveillance device records scheduled for inspection during the period 1 January 2020 to 30 June 2020

Introduction

The Victorian Inspectorate (VI) is required to inspect the records of law enforcement agencies from time to time to determine the extent of their compliance with the *Surveillance Devices Act 1999* (Vic) (the SD Act). In order to fulfil our requirement to report to Parliament at 6-monthly intervals, the VI ordinarily conducts biannual inspections of:

- surveillance device warrants;
- emergency authorisations; and
- retrieval warrants;

which ceased during the preceding 6-monthly period.

During the 1 January to 30 June 2020 inspection period, the VI did not conduct an inspection of records belonging to the following Victorian agencies authorised to use surveillance devices:

- 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

Although the VI had scheduled an inspection at each of these agencies during the period, workplace restrictions made in response to the COVID-19 pandemic caused the VI to postpone its inspection program. It is important to note that whilst the VI did not inspect any records for the period of this report, the VI will report on the findings from the inspection of all warrants and authorisations relevant to this period in the next inspection report that will cover the 1 July to 31 December 2020 period.

This report is made to acquit the VI's obligation under s 30Q of the SD Act to make a report to Parliament, and provide a copy to the Attorney-General, on the results of its inspections for a 6-monthly period. Whilst on this occasion the VI is unable to report on inspection findings, the following section provides an overview of the types of checks the VI ordinarily makes from its inspection of agency records

Inspection of agency records

The use of surveillance devices (including data, listening, optical and tracking devices) by Victorian government agencies is highly intrusive of individuals' privacy. The role of the VI is established by the SD Act, and ensures independent oversight to assure the public that surveillance devices have been used lawfully, including the use and communication of information obtained by the use of such devices, and reporting obligations. The VI further ensures that requirements for the secure storage and destruction of records or reports containing information obtained by the use of surveillance devices have been met.

The VI assesses compliance based on the records made available to us at the time of inspection, our discussions with the relevant agencies, as well as the action they take in response to any issues we have raised. The following provides an overview of the checks the VI ordinarily makes to determine whether each agency has been compliant with its obligations under the SD Act.

WARRANTS

Were applications for warrants (including extensions and variations) properly made?

Application requirements must be satisfied in accordance with ss 15 and 20 of the SD Act, as follows:

- Approval was provided by an authorised police officer or a senior officer of the agency concerned.
- The applicants were law enforcement officers.
- The applicant's name as well as the nature and duration of the warrant sought were specified, including the type of device sought.
- A sworn affidavit was provided in support.
- The applications were made to a Supreme Court judge or magistrate, as appropriate.

Were warrants, including retrieval warrants, and emergency authorisations in proper form and revocations properly made?

Issued warrants must specify the following matters in accordance with s 18 of the SD Act:

- The name of the applicant and alleged offence.
- Date warrant was issued, and the kind of surveillance device authorised.
- The permitted premises, object or class of object for the device, as applicable.
- Name of person whose conversations or movements will be subject to the device, if known.
- Duration for the warrant (up to 90 days).
- Name of primary law enforcement officer responsible for executing the warrant.
- Any conditions for the installation or use of the device.
- When the report under s 30K of the SD Act must be made.

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- The name and signature of the issuing authority (magistrate or judge).

A retrieval warrant must comply with s 20F of the SD Act by specifying the following:

- The name of the applicant and date warrant was issued.
- Kind of surveillance device authorised for retrieval and premises or object from which it is to be retrieved.
- Duration for the warrant (up to 90 days).
- Name of primary law enforcement officer responsible for executing the warrant.
- Any conditions for entry of premises.
- When the report made under s 30K of the SD Act must be made.
- The name and signature of the issuing authority (magistrate or judge).

Emergency authorisations (Victoria Police and IBAC only) must comply with the following in accordance with ss 26-28 of the SD Act:

- The emergency authorisation must be given by a senior officer of the agency.
- An application to approve the exercise of powers under the emergency authorisation must be made to a Supreme Court judge within 2 days of the authorisation.
- The application must:
 - specify the applicant's name;
 - specify the kind of surveillance device, as well as the nature and duration of the warrant; and
 - be supported by a sworn affidavit.

Discontinuation of use of surveillance devices and revocation of warrants must be done in accordance with ss 20B and 20A of the SD Act, respectively.

- The use of any device no longer required to be discontinued immediately.
- Surveillance device warrant to be revoked by the agency's chief officer.

RECORDS

Did the agency keep all records connected with warrants and emergency authorisations?

Records connected with surveillance device warrants and emergency authorisations must be kept in accordance with s 30M of the SD Act, including:

- Each warrant issued.
- Each emergency authorisation, and application made for such.
- A copy of each warrant application, and any application for its extension, variation or revocation.
- A copy of each application for approval to exercise powers under an emergency authorisation.
- A copy of each report made under s 30K of the SD Act to a magistrate or judge.
- Copies of any evidentiary certificates issued under s 36 of the SD Act.

Did the agency keep all other necessary records?

Other records that specify the following details must be kept in accordance with s 30N of the SD Act:

- Each use made of information obtained by the use of a surveillance device.
- Each communication of information obtained by the use of a surveillance device to a person other than a law enforcement officer of the agency.
- Each occasion information obtained by the use of a surveillance device was given in evidence in a relevant proceeding.
- The destruction of records or reports obtained by the use of surveillance devices.

Was an accurate register of warrants and emergency authorisations maintained?

The register must comply with s 30O of the SD Act by specifying the following particulars:

- Date the warrant was issued.
- Name of magistrate or judge who issued the warrant, as well as the name of the primary law enforcement officer responsible for its execution.
- The offence in relation to which the warrant was issued.
- The period during which the warrant was in force.
- Any variation or extension of the warrant.

The register must also record the following matters connected with emergency authorisations:

- Date emergency authorisation was given.
- Name of senior officer who gave the authorisation, as well as the law enforcement officer to whom it was given.
- The offence connected to the authorisation.
- Date application was made to the Supreme Court for approval of powers exercised under the authorisation.

REPORTS

Were reports to the magistrate and judge properly made?

Within the time specified in the warrant, the agency must make a report to the magistrate or judge who issued the surveillance device warrant that states whether the warrant was executed; and if it was, to give the following details for its use in accordance with s 30K(2) of the SD Act:

- Name of each person involved in the execution of the warrant.
- Kind of surveillance device used.
- Period the device was used.
- Name of any person whose movements or conversations were captured by use of the device or whose geographic location was determined by the use of a tracking device, if known.

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- Premises for installation of the device or the location for its use, as applicable.
- Object in or on which the device was installed or the premises for such object, as applicable.
- The benefit to the investigation as well as the general use made or to be made of the information derived from its use.
- Compliance with any warrant conditions, as applicable.
- If the warrant was extended or varied, the number of such occurrences and the reasons for them.
- If the warrant was revoked by the chief officer under s 20A(2), whether the Public Interest Monitor was notified of this and the reasons the device was no longer required.

In the case of a retrieval warrant, the report must specify the following matters in accordance with s 30K(3) of the SD Act:

- Premises for retrieval of the device, and anything opened or removed and replaced.
- Whether the surveillance device was retrieved; and if not, the reason why.
- Compliance with any warrant conditions, as applicable.
- If the warrant was revoked by the chief officer under s 20H(3), whether the Public Interest Monitor was notified of this and the reasons for the revocation.

Was the annual report to the Minister properly made?

Each agency, irrespective of whether they exercised their powers under the SD Act for the relevant period, must make a report to the Attorney-General by 30 September each year that covers the preceding financial year and meets the requirements of s 30L of the SD Act.

TRANSPARENCY AND COOPERATION

The VI further measures each agency's compliance culture by considering the following questions with respect to each inspection and any follow-up suggestions or issues:

Did the agency self-disclose compliance issues?

Were issues identified at previous inspections addressed?