

**VICTORIAN  
INSPECTORATE**

---

# Inspection Report:

## *Surveillance Devices Act 1999 (Vic)*

---

Report by the Victorian Inspectorate on surveillance device records inspected during the period 1 July 2022 to 31 December 2022

# Contents

---

|                                                         |           |
|---------------------------------------------------------|-----------|
| Overview .....                                          | 3         |
| Introduction .....                                      | 4         |
| <b>OUR ROLE.....</b>                                    | <b>4</b>  |
| <b>HOW WE ASSESS COMPLIANCE.....</b>                    | <b>4</b>  |
| <b>HOW WE REPORT ON COMPLIANCE .....</b>                | <b>4</b>  |
| Department of Environment Land Water and Planning ..... | 6         |
| Environment Protection Authority .....                  | 7         |
| Game Management Authority .....                         | 8         |
| Independent Broad-based Anti-corruption Commission..... | 9         |
| <b>FINDINGS - WARRANTS.....</b>                         | <b>9</b>  |
| <b>FINDINGS - RECORDS .....</b>                         | <b>10</b> |
| <b>FINDINGS - REPORTS .....</b>                         | <b>11</b> |
| <b>FINDINGS - TRANSPARENCY AND COOPERATION .....</b>    | <b>12</b> |
| Office of the Special investigator.....                 | 13        |
| Victorian Fisheries Authority .....                     | 14        |
| Victoria Police.....                                    | 15        |
| <b>FINDINGS - WARRANTS.....</b>                         | <b>15</b> |
| <b>FINDINGS - RECORDS .....</b>                         | <b>16</b> |
| <b>FINDINGS - REPORTS .....</b>                         | <b>18</b> |
| <b>FINDINGS - TRANSPARENCY AND COOPERATION .....</b>    | <b>19</b> |

# Overview

---

This report presents the results of inspections conducted by the Victorian Inspectorate (the VI) from 1 July to 31 December 2022 for records belonging to Victorian agencies authorised to use surveillance devices. The following seven agencies were authorised to exercise surveillance device powers during this period:

- Department of Environment, Land, Water and Planning (DELWP)<sup>1</sup>
- Environment Protection Authority (EPA)
- Game Management Authority (GMA)
- Independent Broad-based Anti-corruption Commission (IBAC)
- Office of the Special Investigator (OSI)
- Victorian Fisheries Authority (VFA)
- Victoria Police

The *Surveillance Devices Act 1999* (Vic) (the SD Act) provides the legislative framework for these agencies to use surveillance devices to investigate, or obtain evidence of the commission of, an offence that has been, is being, is about to be, or is likely to be, committed. Law enforcement officers of these agencies can apply to the Supreme Court for a surveillance device warrant authorising use of the following types of devices: data, listening, optical, and tracking. For tracking devices only, an application may be made to the Magistrates' Court. Victoria's Public Interest Monitor (PIM) is entitled to make submissions on warrant applications. In addition to court-issued warrants, senior officers of Victoria Police and IBAC can (and during the report period, the OSI could), in certain emergency situations, authorise the use of surveillance devices.

The role of the VI is established by the SD Act, and it ensures independent oversight of agencies' compliance with the SD Act. The VI is required to inspect, from time to time, the records of each agency and report on the results of its inspections at six-monthly intervals to each House of Parliament as well as the responsible Minister (Attorney-General). The use of surveillance devices by Victorian government agencies is highly intrusive, and therefore the VI's role is designed to independently assess the extent to which agency actions comply with the SD Act.

This report gives the inspection results for warrants that ceased in the six-month period ending 30 June 2022, as well as any warrant applications refused, destruction activity undertaken, and evidentiary certificates issued during the same period. The VI inspected 100% of the records available for inspection.

While this report identifies some errors, no significant compliance issues were identified. The VI has not made any recommendations as a result of its inspections of surveillance device records for the 1 July to 31 December 2022 reporting period.

---

<sup>1</sup> As a result of machinery of government changes that took effect on 1 January 2023, the relevant agency is now known as the Department of Energy, Environment and Climate Action.

# Introduction

---

The SD Act imposes strict controls on the use of surveillance devices by Victorian law enforcement agencies, including the use and communication of information obtained by the use of such devices. It also imposes reporting obligations, requirements for the secure storage and destruction of records and reports containing information obtained by the use of surveillance devices.

## OUR ROLE

The VI performs an independent oversight function by inspecting the records of law enforcement agencies to determine the extent of their compliance with the SD Act.

To fulfil our requirement to report to Parliament at six-monthly intervals, the VI conducts biannual inspections of the following which ceased during the preceding six-month period:

- surveillance device warrants
- emergency authorisations
- retrieval warrants.

## HOW WE ASSESS COMPLIANCE

Hard-copy and electronic documents are inspected with the primary purpose of ensuring that records connected with the issue of surveillance device warrants, and other records connected with the use of devices, are being properly kept. The VI also confirms that each law enforcement agency has met its prescribed reporting obligations. We assess compliance based on the records made available to us at the time of inspection, our discussions with the agency, as well as the action they take in response to any issues we have raised.

In this report, we also assess compliance with the reporting requirements of section 30L of the SD Act. Each agency able to make applications to use a surveillance device is required to make an annual report to the Attorney-General that is also tabled in Parliament. The VI assesses these reports against various criteria, including the requirement they be submitted to the Attorney-General by 30 September each year.

## HOW WE REPORT ON COMPLIANCE

To ensure procedural fairness, each agency is given an opportunity to comment on the VI's findings from our inspections and to furnish additional records that might assist our assessment. Following this process, the inspection results are considered finalised.

The report provides detail where there is a finding of non-compliance. The VI may, at its discretion, not report on administrative issues (such as typographical or transposition errors) or instances of non-compliance where the consequences are negligible.

The following sections of this report provide the results of the VI's inspection of surveillance records during the period 1 July to 31 December 2022. Inspection results are separately reported for each Victorian law enforcement agency with the authority to exercise powers under the SD Act.

# Department of Environment Land Water and Planning<sup>2</sup>

---

DELWP's Major Operations and Investigations Unit administers surveillance device warrants issued to the agency.

There were no ceased warrants or other surveillance device records at DELWP for the reporting period and as a result the VI did not conduct an inspection of DELWP records on this occasion.

In this report, the VI's assessment of DELWP's extent of compliance is limited to whether the reporting requirements of section 30L of the SD Act were met, including whether it was submitted to the Attorney-General by 30 September 2022.

The VI found that DELWP was compliant with the reporting requirements of section 30L of the SD Act. In response to feedback from the VI, the final annual report made by the Secretary for the 2021-22 financial year included some minor amendments to the information given against the reporting criteria.

---

<sup>2</sup> Since 1 January 2023, this agency has become the Department of Energy, Environment and Climate Action.

# Environment Protection Authority

---

The EPA has not yet made an application under the SD Act. Therefore, the VI did not conduct an inspection of records at the EPA.

The VI however confirms the EPA made an annual report for the 2021-22 financial year under section 30L of the SD Act that met all reporting criteria and was submitted to the Attorney-General by 30 September 2022.

## Game Management Authority

---

The GMA has yet to make an application under the SD Act, and as a result the VI did not conduct an inspection of records at the GMA.

The VI found the GMA made an annual report for the 2021-22 financial year under section 30L of the SD Act that met all reporting criteria and was submitted to the Attorney-General by 30 September 2022.



# Independent Broad-based Anti-corruption Commission

---

IBAC's Internal Compliance team administers surveillance device warrants issued to IBAC. On 4 November 2022, the VI inspected the files for two surveillance device warrants administered by IBAC. These files, one of which included a warrant with an assistance order made under section 22 of the SD Act, represent all eligible surveillance device records for the reporting period.

## FINDINGS - WARRANTS

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

The VI found that the two applications made for a surveillance device warrant by IBAC complied with the requirements of section 15 of the SD Act.

Specifically, the VI found the following requirements were met:

- the applicant was a law enforcement officer
- approval was provided by a senior officer
- the applicant's name as well as the nature and duration of the warrant were specified, including the type of device sought
- a sworn affidavit was provided in support
- the PIM was notified of the application
- the application was made to a Supreme Court judge or magistrate, as appropriate.

IBAC did not apply to extend or vary a warrant under section 20 of the SD Act during the period.

IBAC did, however, make one application for an assistance order that complied with the requirements under section 21 of the SD Act—being in the same manner as an application for a warrant specified above.

### ***Were warrants, including retrieval warrants, and emergency authorisations in the proper form, and were revocations properly made?***

The two issued surveillance device warrants complied with section 18 of the SD Act by specifying the following:

- the name of the applicant and alleged offence
- the date the warrant was issued, and the kind of surveillance device authorised
- the premises, object or class of object, or the name of the person (if known) in respect of which the device will be used, as applicable
- the duration of the warrant (not more than 90 days)
- the name of the law enforcement officer primarily responsible for executing the warrant
- any conditions for the installation or use of the device

- when the report under section 30K of the SD Act must be made
- the name and signature of the issuing authority (magistrate or judge).

IBAC did not make an application for a retrieval warrant or for an emergency authorisation to use surveillance device during the period. For the inspected warrants, IBAC did not revoke a warrant via a written instrument signed by a delegate of the IBAC Commissioner.

The assistance order granted to IBAC was made in the proper form and specified the matters under section 22 of the SD Act.

## FINDINGS - RECORDS

### ***Did IBAC keep all records connected with warrants and emergency authorisations?***

IBAC is required to keep records connected with warrants and emergency authorisations in accordance with section 30M of the SD Act, including:

- each warrant issued
- each notice given under section 20A(3) for the revocation of a warrant
- 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 section 30K of the SD Act to a magistrate or judge
- a copy of each evidentiary certificate issued under section 36 of the SD Act.

IBAC complied with these record-keeping requirements with respect to the two warrants for the period. The VI was informed that IBAC did not make any evidentiary certificates connected to a surveillance device warrant during the six-monthly period ending 30 June 2022.

### ***Did IBAC keep all other necessary records?***

IBAC is also required to keep other records in accordance with section 30N of the SD Act, including details of:

- 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 an IBAC law enforcement officer
- 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.

The VI found that IBAC complied with these requirements, noting no records or reports were destroyed during the period.

***Did IBAC maintain an accurate register of warrants and emergency authorisations?***

The VI found that IBAC kept a register of warrants, as required by section 30O of the SD Act.

The register specified the following particulars for each inspected surveillance device warrant:

- the date the warrant was issued
- the name of the magistrate or judge who issued the warrant, as well as the name of the law enforcement officer primarily 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.

Since IBAC did not exercise its emergency authorisation powers during the relevant period, there were no matters to be specified in the register in relation to section 30O(3) of the SD Act.

## FINDINGS - REPORTS

***Were reports to the magistrate or judge properly made?***

Under section 30K of the SD Act, IBAC is required within the time specified in the warrant to make a report to the magistrate or judge who issued the warrant. These reports must state whether the warrant was executed and, if it was, give the following details for its use:

- the name of each person involved in the execution of the warrant
- the kind of surveillance device used
- the period the device was used
- the name of any person whose activities or conversations were captured by use of the device or whose geographic location was determined by the use of a tracking device, if known
- the premises at which the device was installed or the location of its use, as applicable
- the object in or on which the device was installed or the premises at which the object was located when the device was installed, as applicable
- the benefit to the investigation of the use of the device 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 section 20A(2) of the SD Act, the reason the device was no longer required and whether the PIM was notified of the revocation.

The reports made by IBAC for the two inspected warrants were made within the requisite timeframe and complied with these requirements, except for one minor error with the reported period during which devices were used under a warrant.

In the case of one warrant, although the report made under section 30K of the SD Act stated a composite audio and tracking device as well as an optical device were used from 15 November 2021,

a memo made by IBAC's Technical Surveillance area for the same warrant reports these devices were installed on 16 November 2021. In post-inspection discussions, IBAC agreed to correct this error through a supplementary report to the relevant judge—the VI subsequently confirmed this report was made at the next inspection of IBAC records.

***Was the annual report to the Minister properly made?***

The VI assessed IBAC's compliance with the reporting requirements of section 30L of the SD Act, including whether it was submitted to the Attorney-General by 30 September 2022. While the VI found that the annual report made by the Commissioner for the 2021-22 financial year met all reporting criteria, it was submitted to the Attorney-General marginally late—on 6 October 2022.

## FINDINGS - TRANSPARENCY AND COOPERATION

The VI considers an agency's transparency, cooperation during inspection, and responsiveness to suggestions and issues to be a measure of its compliance culture.

***Did IBAC self-disclose compliance issues?***

While IBAC did not make any self-disclosures at the inspection, it did however disclose a compliance matter connected to a surveillance device warrant during the period for this report.

On 9 September 2022, IBAC disclosed a delegation error that meant numerous members of its staff, including investigators, were sworn in by a person not delegated to do so. This affected swearing in of staff that took place from 12 August 2021 to 26 August 2022. This error affected certain functions performed by the incorrectly sworn in staff, including making an application for a SD warrant. This delegation-related disclosure was subject to an additional inspection by the VI during the following reporting period (January to June 2023), and the results from this additional inspection of IBAC records will be dealt with in a separate report.

***Were issues identified at previous inspections addressed?***

The VI previously reported that IBAC self-disclosed three instances where an assistance order made under section 22 of the SD Act was not in the proper form—that is, not endorsed on the face of the relevant surveillance device warrant in accordance with section 22(4)(a) of the SD Act. The VI inspected updated draft procedures made by IBAC for administering surveillance device warrants and confirmed amendments have been made to reduce any recurrence of this type of error.<sup>3</sup>

---

<sup>3</sup> Following the inspection conducted in the next reporting period (January to June 2023), IBAC advised the VI these procedures have been endorsed and published.

## Office of the Special investigator

---

The OSI did not make an application under the SD Act in the six-month period ending 30 June 2022, and as a result, the VI did not conduct an inspection of records at the OSI during the reporting period.

The VI however confirms the OSI made an annual report for the 2021-22 financial year under section 30L of the SD Act that met all reporting criteria and was submitted to the Attorney-General by 30 September 2022.

# Victorian Fisheries Authority

---

The VFA did not have any relevant records associated with warrants that ceased in the six-month period ending 30 June 2022.

The VI however reviewed and provided feedback on draft procedures developed by the VFA at an inspection conducted on 28 September 2022. The VFA has undertaken work to develop formal written procedures for administering surveillance device warrants that will be published internally once finalised. The VI looks forward to reviewing the finalised procedures at the next inspection of VFA records.

Additionally, the VI assessed the VFA's compliance with the reporting requirements of section 30L of the SD Act. The VI found the annual report made by the CEO for the 2021-22 financial year met all reporting criteria and was submitted to the Attorney-General by 30 September 2022.

# Victoria Police

---

There are two units within Victoria Police that administer surveillance device warrants and emergency authorisations:

- Special Projects Unit (SPU), the major user of surveillance device warrants.
- Technical Projects Unit (TPU), within Professional Standards Command.

In addition, the Technical Surveillance Unit (TSU) within Victoria Police is responsible for the installation, maintenance, and retrieval of surveillance devices under the authority of warrants or emergency authorisations. Records held by the TSU in relation to these matters are inspected annually and cross-checked against records held by the SPU and TPU. The VI inspected all available TSU records on 6 June 2023 and cross-checked its findings against records held by the SPU and TPU.

The VI inspected 44 surveillance device files administered by Victoria Police's SPU and TPU. This includes 42 issued warrants, and two warrants that were either extended or varied. In addition to records connected to the destruction of 6 surveillance device warrants, the VI also inspected 17 evidentiary certificates. Altogether, these represent all relevant surveillance device records for the period.

Two surveillance device files at the TPU were inspected on 18-19 October 2022, and 42 files at the SPU were inspected from 15-17 November 2022.

For the total number of warrants granted to Victoria Police for the period, 3 were not executed—this represents 7% of all issued warrants. It is noted that Victoria Police revoked all warrants that were not executed.

A warrant may not be executed for a number of reasons. Generally, this is due to the operation concluding before there was an opportunity to install a surveillance device.

## FINDINGS - WARRANTS

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

The VI found that all applications made for a surveillance device warrant complied with the requirements of section 15 of the SD Act.

Specifically, the VI found the following requirements were met:

- the applicant was a law enforcement officer
- approval was provided by an authorised police officer
- the applicant's name as well as the nature and duration of the warrant were specified including the type of device sought
- a sworn affidavit was provided in support
- the PIM was notified of the application
- the application was made to a Supreme Court judge or magistrate, as appropriate.

In addition to meeting these requirements, Victoria Police made one application to extend an existing warrant, and one other application to vary a warrant. On each occasion, the application was made to the relevant judge as required by section 20 of the SD Act.

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

Issued surveillance device warrants must specify the following matters in accordance with section 18 of the SD Act:

- the name of the applicant and alleged offence
- the date the warrant was issued, and the kind of surveillance device authorised
- the premises, object or class of object, or the name of the person (if known) in respect of which the device will be used, as applicable
- the duration of the warrant (not more than 90 days)
- the name of the law enforcement officer primarily responsible for executing the warrant
- any conditions for the installation or use of the device
- when the report under section 30K of the SD Act must be made
- the name and signature of the issuing authority (magistrate or judge).

All surveillance device warrants issued to Victoria Police complied with these requirements.

Victoria Police did not make an application for a retrieval warrant or for an emergency authorisation to use a surveillance device during the period.

For the inspected warrants, Victoria Police revoked a warrant on 29 occasions via written instruments signed by a delegate of the Chief Commissioner of Police, in accordance with section 20A of the SD Act. Victoria Police revoked warrants in cases where it decided the use of a surveillance device was no longer necessary for the purpose of enabling evidence to be obtained of the commission of the offence or the identity or location of the offender. For each revoked warrant where a surveillance device had been installed, Victoria Police first discontinued the use of the device pursuant to section 20B of the SD Act.

## FINDINGS - RECORDS

***Did Victoria Police keep all records connected with warrants and emergency authorisations?***

Victoria Police is required to keep records connected with surveillance device warrants in accordance with section 30M of the SD Act, including:

- each warrant issued
- each notice given under section 20A(3) for the revocation of a warrant
- each emergency authorisation, and the 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 section 30K of the SD Act to a magistrate or judge
- a copy of each evidentiary certificate issued under section 36 of the SD Act.

Victoria Police complied with these record-keeping requirements. A total of 17 evidentiary certificates were inspected for the period.

***Did Victoria Police keep all other necessary records?***

Victoria Police is also required to keep other records in accordance with section 30N of the SD Act, including details of:

- 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 Victoria Police law enforcement officer
- 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.

The VI found that Victoria Police complied with these requirements.

Victoria Police kept details on the destruction of records and reports related to 6 surveillance device warrants in accordance with section 30N(f) of the SD Act.

***Did Victoria Police maintain an accurate register of warrants and emergency authorisations?***

The VI found that Victoria Police kept an accurate register of warrants, as required by section 30O of the SD Act.

The register specified for each warrant file inspected the following particulars:

- the date the warrant was issued
- the name of magistrate or judge who issued the warrant, as well as the name of the law enforcement officer primarily 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.

Since Victoria did not exercise its emergency authorisation powers during the relevant period, there were no matters to be specified in the register in relation to section 30O(3) of the SD Act.

## FINDINGS - REPORTS

***Were reports to the magistrate or judge properly made?***

Under section 30K of the SD Act, Victoria Police is required within the time specified in the warrant to make a report to the magistrate or judge who issued the warrant.

With respect to a surveillance device warrant, the report must state whether the warrant was executed and, if it was, give the following details for its use:

- the name of each person involved in the execution of the warrant
- the kind of surveillance device used
- the period the device was used
- the name of any person whose activities or conversations were captured by the use of the device or whose geographic location was determined by the use of a tracking device, if known
- the premises for installation of the device or the location for its use, as applicable
- the object in or on which the device was installed or the premises at which the object was located when the device was installed, as applicable
- the benefit to the investigation of the use of the device 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 section 20A(2), the reason the device was no longer required and whether the PIM was notified of the revocation.

All reports made by Victoria Police under section 30K of the SD Act for warrants that ceased between 1 January and 30 June 2022 were made within the requisite timeframe, however one report connected to a surveillance device warrant contained an error.

**Finding 1 – Incorrect information given in the report to the judge**

Victoria Police is required to report to the judge who issued the warrant the general use of information obtained by use of a surveillance device. The VI identified uses recorded in the use and communication register for one warrant that were not given in the report to the judge for the same warrant. Enquiries with the TPU found that entries to the register were backdated by the investigator after the report was sent to the judge. The relevant entries had not been made at the time the report to the judge had been prepared, and as such, this information was not available to the TPU.

In response to the VI's findings, the TPU advised that it made an amended report, and that this was submitted to the relevant judge. The VI will inspect this additional report at the next scheduled inspection.

***Was the annual report to the Minister properly made?***

The VI found that Victoria Police complied with the reporting requirements of s 30L of the SD Act. The annual report made by the Chief Commissioner for the 2021-22 financial year met all reporting criteria and was submitted to the Attorney-General by 30 September 2022.

**FINDINGS - TRANSPARENCY AND COOPERATION**

The VI considers an agency's transparency, its cooperation during inspection, and its responsiveness to suggestions and issues to be a measure of its compliance culture.

In the case of one inspected warrant at the SPU in November 2022, the VI found that although it authorised the use of a data surveillance device, the report to the judge under section 30K of the SD Act for the same warrant reported that a tracking device was not installed (in addition to reporting that a data surveillance device was used).

As a result of this reporting anomaly, the VI sought clarification from the SPU on the use of this particular data surveillance device, including whether any location/tracking data was obtained. The VI requested from the SPU copies of Victoria Police's policies and procedures as well as any legal advice that relates to making an application for, and making use of, this type of device. This information will allow the VI to satisfy itself that, among other things, the report made to the judge was accurate.

The VI's enquiries in relation to this issue, including its discussions with Victoria Police, remain ongoing. The VI will provide further updates in this matter in the next inspection report.

***Did Victoria Police self-disclose compliance issues?***

Victoria Police's SPU made one self-disclosure at the inspection. SPU disclosed that during the period it had made a supplementary report to the judge under section 30K of the SD Act to report an additional use of information obtained under a surveillance device warrant that had not been included in its initial report. The requirement to make this correction was identified through SPU's quality assurance checks.

***Were issues identified at previous inspections addressed?***

The VI re-inspected one warrant file during the period to confirm a correction was made for an error identified at a previous inspection of Victoria Police records. The VI confirmed the TPU made a supplementary section 30K report to the relevant judge to give additional uses for the information obtained by the installed surveillance devices.