

Authorised Version No. 003
Public Interest Monitor Act 2011

No. 72 of 2011

Authorised Version incorporating amendments as at
10 February 2014

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The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to establish the offices of Principal Public Interest Monitor and Deputy Public Interest Monitors; and
- (b) to confer functions on those Public Interest Monitors under this Act and under—
 - (i) the **Major Crime (Investigative Powers) Act 2004**; and
 - (ii) the **Surveillance Devices Act 1999**; and
 - (iii) the **Telecommunications (Interception) (State Provisions) Act 1988**; and
 - (iv) the **Terrorism (Community Protection) Act 2003**.

2 Commencement

This Act comes into operation on a day or days to be proclaimed.

3 Object

The object of this Act is to provide further safeguards for applications for the following—

- (a) coercive powers orders;
- (b) surveillance device warrants;
- (c) retrieval warrants;
- (d) assistance orders;
- (e) approval of emergency authorisations;
- (f) telecommunications interception warrants;
- (g) covert search warrants;
- (h) preventative detention orders;
- (i) prohibited contact orders;
- (j) an extension, variation, renewal or revocation of an order, warrant or approval referred to in paragraphs (a) to (i).

4 Definitions

In this Act—

assistance order has the same meaning as it has in the **Surveillance Devices Act 1999**;

Australian legal practitioner has the same meaning as it has in the **Legal Profession Act 2004**;

coercive powers order has the same meaning as it has in the **Major Crime (Investigative Powers) Act 2004**;

covert search warrant means a covert search warrant under Part 2 of the **Terrorism (Community Protection) Act 2003**;

Deputy Public Interest Monitor means a Deputy Public Interest Monitor appointed under section 7;

emergency authorisation has the same meaning as it has in the **Surveillance Devices Act 1999**;

preventative detention order has the same meaning as it has in Part 2A of the **Terrorism (Community Protection) Act 2003**;

prohibited contact order has the same meaning as it has in Part 2A of the **Terrorism (Community Protection) Act 2003**;

Principal Public Interest Monitor means the Principal Public Interest Monitor appointed under section 6;

Public Interest Monitor means—

- (a) the Principal Public Interest Monitor; or
- (b) a Deputy Public Interest Monitor;

relevant application means an application for—

- (a) a coercive powers order;
- (b) a surveillance device warrant;
- (c) a retrieval warrant;
- (d) an assistance order;
- (e) an approval of an emergency authorisation;
- (f) a telecommunications interception warrant;
- (g) a covert search warrant;
- (h) a preventative detention order;
- (i) a prohibited contact order;
- (j) an extension, variation, renewal or revocation of an order, warrant or approval referred to in paragraphs (a) to (i);

retrieval warrant has the same meaning as it has in the **Surveillance Devices Act 1999**;

surveillance device warrant has the same meaning as it has in the **Surveillance Devices Act 1999**;

telecommunications interception warrant has the same meaning as warrant has in the **Telecommunications (Interception) (State Provisions) Act 1988**.

5 Act binds the Crown

This Act binds the Crown—

- (a) in right of the State of Victoria; and
- (b) to the extent that the legislative power of the Parliament permits, in all its other capacities.

PART 2—APPOINTMENT OF PUBLIC INTEREST MONITOR

6 Principal Public Interest Monitor

The Governor in Council may appoint a person as the Principal Public Interest Monitor.

7 Deputy Public Interest Monitors

The Governor in Council may appoint one or more persons as Deputy Public Interest Monitors.

8 Eligibility for appointment

- (1) A Public Interest Monitor must be an Australian legal practitioner.
- (2) A person who is a member of the Parliament of Victoria or of the Commonwealth or of another State or Territory is not eligible to be appointed as a Public Interest Monitor.
- (3) A Public Interest Monitor must not be any of the following—
 - (a) the Director of Public Prosecutions;
 - (b) the Solicitor for Public Prosecutions;
 - (c) any person appointed under the **Public Prosecutions Act 1994**;
 - (d) a person who is employed in, or seconded to, the Office of Public Prosecutions;
 - (e) a person who—
 - (i) is eligible to make a relevant application; or
 - (ii) is employed in or by, or seconded to, a body that is eligible to make a relevant application.

9 Terms and conditions of appointment

- (1) The appointment of a Public Interest Monitor is to be for the period, not exceeding 3 years, set out in the instrument of appointment.

- (2) The appointment of a Public Interest Monitor is to be on the terms and conditions set out in the instrument of appointment.
- (3) A Public Interest Monitor may be reappointed.
- (4) The **Public Administration Act 2004** does not apply to a Public Interest Monitor.

10 Remuneration

- (1) A Public Interest Monitor is entitled to be paid the remuneration and allowances that are determined from time to time in respect of that Public Interest Monitor by the Governor in Council.
- (2) The remuneration of a Public Interest Monitor cannot be reduced during his or her period of appointment, unless he or she consents to the reduction.

11 Acting Principal Public Interest Monitor

- (1) The Governor in Council may appoint a person qualified to be appointed as a Public Interest Monitor to act as the Principal Public Interest Monitor—
 - (a) during a vacancy in the office of the Principal Public Interest Monitor; or
 - (b) during any period, or all periods, when the Principal Public Interest Monitor is absent from duty or from the State or, for another reason, is unable to perform the duties of the office.
- (2) The appointment is to be for a period, not exceeding 6 months, set out in the instrument of appointment.
- (3) The appointment is to be on the same terms and conditions as the Principal Public Interest Monitor.

12 Vacancy and resignation

A Public Interest Monitor ceases to hold office if he or she—

- (a) resigns by notice in writing delivered to the Governor; or
- (b) becomes an insolvent under administration; or
- (c) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or
- (d) nominates for election for the Parliament of Victoria or of the Commonwealth or of another State or a Territory of the Commonwealth; or
- (e) is appointed as—
 - (i) the Director of Public Prosecutions; or
 - (ii) the Solicitor for Public Prosecutions; or
- (f) is appointed under the **Public Prosecutions Act 1994**; or
- (g) is employed in, or seconded to, the Office of Public Prosecutions; or
- (h) becomes a person who—
 - (i) is eligible to make a relevant application; or
 - (ii) is employed in or by, or seconded to, a body that is eligible to make a relevant application; or
- (i) ceases to be an Australian legal practitioner; or
- (j) is removed from office under section 13.

13 Suspension and removal from office

- (1) The Governor in Council may suspend or remove the Principal Public Interest Monitor or a Deputy Public Interest Monitor from office on any ground on which the Governor in Council is satisfied that the Public Interest Monitor is unfit to hold office.
 - (2) If the Principal Public Interest Monitor or a Deputy Public Interest Monitor is suspended from office under subsection (1), he or she is taken not to be the Principal Public Interest Monitor or a Deputy Public Interest Monitor (as the case requires) during the period of suspension.
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PART 3—FUNCTIONS OF A PUBLIC INTEREST MONITOR

14 Functions of Public Interest Monitor

A Public Interest Monitor has the following functions—

- (a) to appear at any hearing of a relevant application to test the content and sufficiency of the information relied on and the circumstances of the application; and
- (b) for the purpose of testing the content and sufficiency of the information relied on and the circumstances of the application—
 - (i) to ask questions of any person giving information in relation to the application; and
 - (ii) to make submissions as to the appropriateness of granting the application; and
- (c) any other functions conferred on a Public Interest Monitor under any Act or law.

15 Guidelines

The Principal Public Interest Monitor may issue guidelines about how a Deputy Public Interest Monitor is to perform his or her functions.

16 Conflict of interest

- (1) A Public Interest Monitor must avoid any actual or potential conflict of interest with his or her role as a Public Interest Monitor.
- (2) A Public Interest Monitor may declare that he or she is unable to perform the functions of a Public Interest Monitor in relation to a matter if the Public Interest Monitor believes that he or she has an actual or potential conflict of interest in relation to that matter.

- (3) If the Principal Public Interest Monitor makes a declaration under subsection (2), he or she may arrange for a Deputy Public Interest Monitor to perform the functions of the Principal Public Interest Monitor in relation to the matter.
- (4) If a Deputy Public Interest Monitor makes a declaration under subsection (2), the Principal Public Interest Monitor may arrange for another Public Interest Monitor to perform the functions of the Deputy Public Interest Monitor in relation to the matter.

17 Confidentiality

- (1) A person who is or was a Public Interest Monitor must not disclose information obtained or that came to the person's knowledge in the course of or as a result of his or her role, or the performance of his or her functions, as a Public Interest Monitor.
Penalty: 240 penalty units or imprisonment for 2 years or both.
- (2) Subject to subsection (3), subsection (1) does not apply to disclosure of information by a Public Interest Monitor in the performance of his or her functions as a Public Interest Monitor.
- (3) A Public Interest Monitor must not disclose information obtained or that came to his or her knowledge in the course of or as a result of performing his or her functions as a Public Interest Monitor to another Public Interest Monitor except to the extent necessary—
 - (a) to enable a Deputy Public Interest Monitor to discuss his or her functions with the Principal Public Interest Monitor and for the Principal Public Interest Monitor to discuss his or her functions with a Deputy Public Interest Monitor; or

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- (b) to enable a Deputy Public Interest Monitor to discuss his or her functions with another Deputy Public Interest Monitor if the Principal Public Interest Monitor is unavailable; or
 - (c) for the purposes of another Public Interest Monitor undertaking the functions of the Public Interest Monitor if the Public Interest Monitor is unable to perform those functions; or
 - (d) to enable the Principal Public Interest Monitor to prepare an annual report under this Act.
- (4) A person who is or was a Public Interest Monitor is not compellable to disclose information obtained, or that came to the person's knowledge, in the course of or as a result of performing his or her functions as a Public Interest Monitor in any proceeding before a court, board, commission or tribunal.
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PART 4—GENERAL

18 Freedom of Information Act 1982 not to apply to a Public Interest Monitor

A Public Interest Monitor is not, and cannot be declared to be, a prescribed authority for the purposes of the **Freedom of Information Act 1982**.

19 Annual report

- (1) The Principal Public Interest Monitor must give the Minister a report on the performance of the functions of the Public Interest Monitors during each financial year.
- (2) A report for a financial year must be given as soon as practicable, but within 4 months after the end of the financial year.
- (3) A report for a financial year must include—
 - (a) the total number of relevant applications in respect of which a Public Interest Monitor appeared at a hearing during that year; and
 - (b) the number of relevant applications by each law enforcement agency in respect of which a Public Interest Monitor appeared at a hearing during that year; and
 - (c) the number of orders made, warrants issued or authorisations approved on relevant applications by each law enforcement agency during that year; and
 - (d) the number of relevant applications made by telephone during that year; and
 - (e) the number of relevant applications by each law enforcement agency that were refused or withdrawn during that year.

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- (4) A report must not contain information that—
- (a) discloses or may lead to the disclosure of the identity of any person involved in an investigation relating to a relevant application made by a law enforcement agency; or
 - (b) indicates that a particular investigation has been, is being, or is to be conducted.
- (5) In this section—
- law enforcement agency* means a person or body who or which is eligible to make a relevant application.

20 Minister to lay annual reports before each House of the Parliament

- (1) The Minister must cause the report to be laid before each House of the Parliament within 14 sitting days of the House after receiving the report.
- (2) If the Minister proposes to transmit the report to the Parliament on a day on which neither House of the Parliament is actually sitting, the Minister must—
 - (a) give a copy of the report to the clerk of each House of the Parliament; and
 - (b) publish the report on a Government Internet site as soon as practicable after giving it to the clerks.
- (3) The clerk of each House must—
 - (a) notify each member of the House of the receipt of the report under subsection (2)(a) on the same day that the clerk receives that report; and

- (b) make copies of the report available to each member of the House as soon as practicable after the report is received under subsection (2)(a); and
 - (c) cause the report to be laid before the House on the next sitting day of the House.
- (4) A report that is given to the clerks under subsection (2)(a) is taken to have been published by order, or under the authority, of the Houses of Parliament.
- (5) The publication of a report by the Minister under subsection (2)(b) is absolutely privileged and the provisions of sections 73 and 74 of the **Constitution Act 1975** and any other enactment or rule of law relating to the publication of the proceedings of Parliament apply to and in relation to the publication of the report as if it were a report to which those sections applied and had been published by the Government Printer under the authority of Parliament.

21 Regulations

The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary or convenient to be prescribed to give effect to this Act including regulations relating to the following—

- (a) the requirements for transmission, disposal and storage of documents or information that a Public Interest Monitor receives in performing his or her functions;
- (b) the notifications required to be given to a Public Interest Monitor under—
 - (i) the **Major Crime (Investigative Powers) Act 2004**; and

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- (ii) the **Surveillance Devices Act 1999**;
and
 - (iii) the **Telecommunications
(Interception) (State Provisions) Act
1988**; and
 - (iv) the **Terrorism (Community
Protection) Act 2003**.
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s. 22

Pts 5, 6
(Headings
and ss 22–42)
repealed by
No. 72/2011
s. 54.

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Pt 7 (Heading
and s. 43)
amended by
No. 82/2012
s. 166,
repealed by
No. 72/2011
s. 54.

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Pts 8, 9
(Headings
and ss 44–54)
repealed by
No. 72/2011
s. 54.

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 25 October 2011

Legislative Council: 10 November 2011

The long title for the Bill for this Act was "A Bill for an Act to establish a Principal Public Interest Monitor and Deputy Public Interest Monitors and to confer functions on those Public Interest Monitors under the Act and under the **Major Crime (Investigative Powers) Act 2004**, the **Surveillance Devices Act 1999**, the **Telecommunications (Interception) (State Provisions) Act 1988** and the **Terrorism (Community Protection) Act 2003**, to amend other Acts and for other purposes."

The **Public Interest Monitor Act 2011** was assented to on 6 December 2011 and came into operation as follows:

Sections 1–13, 15–21, 52 and 53 on 18 September 2012: Special Gazette (No. 316) 18 September 2012 page 1; ss 14, 22–51 and 54 on 10 February 2013: Special Gazette (No. 32) 6 February 2013 page 2.

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Public Interest Monitor Act 2011** by Acts and subordinate instruments.

Public Interest Monitor Act 2011, No. 72/2011

Assent Date: 6.12.11

Commencement Date: S. 54 on 10.2.14: s. 54

Current State: This information relates only to the provision/s amending the **Public Interest Monitor Act 2011**

Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012

Assent Date: 18.12.12

Commencement Date: S. 166 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2

Current State: This information relates only to the provision/s amending the **Public Interest Monitor Act 2011**

3. Explanatory Details

No entries at date of publication.