

Authorised Version No. 039
Surveillance Devices Act 1999

No. 21 of 1999

Authorised Version incorporating amendments as at
5 June 2019

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No. 21 of 1999

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5 June 2019

The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

- | | |
|---|--|
| (a) to regulate the installation, use, maintenance and retrieval of surveillance devices; | S. 1(a)
amended by
No. 26/2004
s. 4(a). |
| (b) to restrict the use, communication and publication of information obtained through the use of surveillance devices or otherwise connected with surveillance device operations; | S. 1(b)
substituted by
No. 26/2004
s. 4(b). |
| (c) to establish procedures for law enforcement officers to obtain warrants or emergency authorisations for the installation, use, maintenance and retrieval of surveillance devices; | S. 1(c)
amended by
No. 26/2004
s. 4(c). |
| (d) to create offences relating to the improper installation or use of surveillance devices; | |
| (e) to impose requirements for the secure storage and destruction of records, and the making of reports to judges, magistrates and Parliament, in connection with surveillance device operations; | S. 1(e)
substituted by
No. 26/2004
s. 4(d). |
| (f) to repeal the Listening Devices Act 1969 ; | |

S. 1(g)
inserted by
No. 26/2004
s. 4(e).

(g) to recognise warrants and emergency authorisations issued in other jurisdictions for the installation and use of surveillance devices.

2 Commencement

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 January 2000, it comes into operation on that day.

3 Definitions

- (1) In this Act—

S. 3(1) def. of
ambulance officer
inserted by
No. 54/2017
s. 3.

ambulance officer means an operational staff member within the meaning of the **Ambulance Services Act 1986**;

S. 3(1) def. of
applicant
inserted by
No. 26/2004
s. 5(1)(a).

applicant for a warrant, means the law enforcement officer who applies, or on whose behalf an application is made, for the warrant;

assistance order means an order made under section 22;

S. 3(1) def. of
Australian Crime Commission
inserted by
No. 29/2006
s. 3(Sch. 1
item 36.2).

Australian Crime Commission means Australian Crime Commission established by the Australian Crime Commission Act 2002 of the Commonwealth;

authorised police officer means a person appointed by the Chief Commissioner of Police under subsection (2);

<p><i>body-worn camera</i> means a camera normally worn on the person that is capable of recording visual images or sound or both, whether or not the camera is being worn when the recording takes place;</p>	<p>S. 3(1) def. of <i>body-worn camera</i> inserted by No. 54/2017 s. 3.</p>
<p><i>building</i> includes any structure;</p>	
<p><i>business day</i> means a day other than a Saturday, a Sunday or a public holiday appointed under the Public Holidays Act 1993;</p>	<p>S. 3(1) def. of <i>business day</i> inserted by No. 26/2004 s. 5(1)(a).</p>
<p><i>chief officer</i> means—</p> <ul style="list-style-type: none">(a) in relation to Victoria Police—the Chief Commissioner of Police;(b) in relation to the Australian Crime Commission—the Chief Executive Officer of the Australian Crime Commission;(c) in relation to the Department of Environment, Land, Water and Planning—the Secretary to that department;(d) in relation to the Victorian Fisheries Authority—the chief executive officer appointed by the Board of the Victorian Fisheries Authority;(da) in relation to the IBAC—the Commissioner;(e) in relation to the Game Management Authority—the Chief Executive Officer appointed by the Chairperson of the Game Management Authority;	<p>S. 3(1) def. of <i>chief law enforcement officer</i> amended by Nos 18/2002 s. 24(1)(a), 52/2003 s. 52(Sch. 1 item 11(1)(a)), 56/2003 s. 8(1)(a), 104/2003 s. 7, 63/2004 s. 9(1)(b), substituted as def. of <i>chief officer</i> by No. 26/2004 s. 5(1)(b) (as amended by No. 63/2004 s. 13(2)(a)), amended by Nos 13/2012 s. 13(1)(a) (2)(a), 24/2014 s. 82(2), 27/2016 s. 40(1)(a), 68/2016 s. 171(b).</p>

S. 3(1) def. of *Commissioner* inserted by No. 13/2012 s. 13(1)(e).

Commissioner has the same meaning as it has in section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 3(1) def. of *Commonwealth Ombudsman* inserted by No. 26/2004 s. 5(1)(a) (as amended by No. 27/2006 s. 21(1)).

Commonwealth Ombudsman means the person holding office as the Commonwealth Ombudsman under the Ombudsman Act 1976 of the Commonwealth;

computer means any electronic device for storing or processing information;

S. 3(1) def. of *corresponding emergency authorisation* inserted by No. 26/2004 s. 5(1)(a).

corresponding emergency authorisation means an authorisation in the nature of an emergency authorisation given under the provisions of a corresponding law, being an authorisation in relation to a relevant offence within the meaning of that corresponding law;

S. 3(1) def. of *corresponding law* inserted by No. 26/2004 s. 5(1)(a).

corresponding law means a law of another jurisdiction that—

- (a) provides for the authorisation of the use of surveillance devices; and
- (b) is declared by the regulations to be a corresponding law;

S. 3(1) def. of *corresponding warrant* inserted by No. 26/2004 s. 5(1)(a).

corresponding warrant means a warrant in the nature of a surveillance device warrant or retrieval warrant issued under the provisions of a corresponding law, being a warrant in relation to a relevant offence within the meaning of that corresponding law;

data surveillance device means any device capable of being used to record or monitor the input of information into or the output of information from a computer, but does not include an optical surveillance device;

device includes instrument, apparatus and equipment;

* * * * *

S. 3(1) def. of *Director* inserted by No. 63/2004 s. 9(1)(a), amended by No. 34/2008 s. 143(Sch. 2 item 11(a)), repealed by No. 13/2012 s. 13(2)(b).

disciplinary proceedings means proceedings of a disciplinary nature under an Act of Victoria, the Commonwealth or another State or a Territory of the Commonwealth;

emergency authorisation means an emergency authorisation given under Division 3 of Part 4;

enhancement equipment, in relation to a surveillance device, means equipment capable of enhancing a signal, image or other information obtained by the use of the surveillance device;

Game Management Authority means the Game Management Authority established under Part 2 of the **Game Management Authority Act 2014**;

S. 3(1) def. of *Game Management Authority* inserted by No. 24/2014 s. 82(1).

S. 3(1) def. of
IBAC
inserted by
No. 13/2012
s. 13(1)(e).

IBAC means the Independent Broad-based Anti-corruption Commission established under the **Independent Broad-based Anti-corruption Commission Act 2011**;

install includes attach;

S. 3(1) def. of
jurisdiction
inserted by
No. 26/2004
s. 5(1)(a).

jurisdiction means a State or Territory of the Commonwealth;

S. 3(1) def. of
law enforcement agency
inserted by
No. 26/2004
s. 5(1)(a) (as amended by
No. 63/2004
s. 13(1)(a)),
amended by
Nos 13/2012
s. 13(1)(b)
(2)(c), 24/2014
s. 82(3),
27/2016
s. 40(1)(b),
68/2016
s. 171(c).

law enforcement agency means the following agencies—

- (a) Victoria Police;
- (b) the Australian Crime Commission;
- (c) the Department of Environment, Land, Water and Planning;
- (d) the Victorian Fisheries Authority;
- (da) the IBAC;
- (e) the Game Management Authority;

law enforcement officer means—

- (a) in relation to Victoria Police—
 - (i) a police officer; or
 - (ii) a person who is seconded to Victoria Police, including (but not limited to) a member of the police force or police service (however described) of another jurisdiction;
- (b) in relation to the Australian Crime Commission—
 - (i) a member of staff of the Australian Crime Commission; or
 - (ii) a person who is seconded to the Australian Crime Commission, including (but not limited to) a member of the police force or police service (however described) of another jurisdiction;
- (c) in relation to the Department of Environment, Land, Water and Planning—
 - (i) an employee of that department appointed as an authorised officer under section 83 of the **Conservation, Forests and Lands Act 1987**; or
 - (ii) a person who is seconded to that department, including (but not limited to) a member of the police force or police service (however described) of another jurisdiction;

S. 3(1) def. of *law enforcement officer* amended by Nos 52/2003 s. 52(Sch. 1 item 11(1)(b)), 63/2004 s. 9(1)(c), substituted by No. 26/2004 s. 5(1)(c) (as amended by No. 63/2004 s. 13(2)(b)), amended by Nos 13/2012 s. 13(1)(c) (2)(d), 24/2014 s. 82(4), 37/2014 s. 10(Sch. item 163.1(a)(ii)), 27/2016 s. 40(1)(c), 68/2016 s. 171(d).

- (d) in relation to the Victorian Fisheries Authority—
 - (i) an authorised officer appointed by the Victorian Fisheries Authority under Part 3 of the **Victorian Fisheries Authority Act 2016**; or
 - (ii) a person who is seconded to the Victorian Fisheries Authority, including (but not limited to) a member of the police force or police service (however described) of another jurisdiction;
- (da) in relation to the IBAC—a prescribed IBAC Officer;
- (e) in relation to the Game Management Authority—
 - (i) an authorised officer appointed by the Game Management Authority under the **Game Management Authority Act 2014**; or
 - (ii) a person who is seconded to the Game Management Authority, including (but not limited to) a member of the police force or police service (however described) of another jurisdiction;

S. 3(1) def. of *listening device* substituted by No. 26/2004 s. 5(1)(d).

listening device means any device capable of being used to overhear, record, monitor or listen to a conversation or words spoken to or by any person in conversation, but does not include a hearing aid or similar device used by a person with impaired hearing to overcome the impairment and permit that person to hear only sounds ordinarily audible to the human ear;

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maintain, in relation to a surveillance device,
includes—

- (a) adjust, relocate, repair or service the device; and
- (b) replace a faulty device;

*	*	*	*	*	S. 3(1) def. of <i>member of the police force</i> substituted as def. of <i>member</i> by No. 26/2004 s. 5(1)(e), repealed by No. 37/2014 s. 10(Sch. item 163.1(a)(iii)).
*	*	*	*	*	S. 3(1) def. of <i>National Crime Authority</i> substituted as <i>Australian Crime Commission</i> by No. 52/2003 s. 52(Sch. 1 item 11(1)(c)), repealed by No. 29/2006 s. 3(Sch. 1 item 36.1).

offence means offence against the law of Victoria,
the Commonwealth or another State or a
Territory of the Commonwealth;

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S. 3(1) def. of
*Office of
Police
Integrity*
inserted by
No. 63/2004
s. 9(1)(a),
amended by
No. 34/2008
s. 143(Sch. 2
item 11(b)),
repealed by
No. 13/2012
s. 13(2)(b).

* * * * *

S. 3(1) def. of
*optical
surveillance
device*
substituted by
No. 26/2004
s. 5(1)(f).

optical surveillance device means any device capable of being used to record visually or observe an activity, but does not include spectacles, contact lenses or a similar device used by a person with impaired sight to overcome that impairment;

S. 3(1) def. of
*participating
jurisdiction*
inserted by
No. 26/2004
s. 5(1)(a).

participating jurisdiction means a jurisdiction in which a corresponding law is in force;

party—

- (a) to a private activity, means a person who takes part in the activity;
- (b) to a private conversation, means a person by or to whom words are spoken in the course of the conversation;

S. 3(1) def. of
police officer
inserted by
No. 37/2014
s. 10(Sch.
item 163.1
(a)(f)).

police officer has the same meaning as in the **Victoria Police Act 2013**;

S. 3(1) def. of
premises
substituted by
No. 26/2004
s. 5(1)(g).

premises includes—

- (a) land; and

- (b) a building or vehicle; and
- (c) a part of a building or vehicle; and
- (d) any place, whether built on or not—
whether in or outside this jurisdiction;

prescribed IBAC Officer means a sworn IBAC Officer within the meaning of section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011** who holds a position, or is a member of a class, that is prescribed by the regulations for the purposes of this definition;

S. 3(1) def. of ***prescribed IBAC Officer*** inserted by No. 13/2012 s. 13(1)(e).

* * * * *

S. 3(1) def. of ***prescribed member of staff of the Office of Police Integrity*** inserted by No. 63/2004 s. 9(1)(a), amended by No. 63/2004 s. 12 (as amended by No. 29/2006 s. 3(Sch. 1 item 21)), repealed by No. 13/2012 s. 13(2)(b).

private activity means an activity carried on in circumstances that may reasonably be taken to indicate that the parties to it desire it to be observed only by themselves, but does not include—

- (a) an activity carried on outside a building; or
- (b) an activity carried on in any circumstances in which the parties to it ought reasonably to expect that it may be observed by someone else;

private conversation means a conversation carried on in circumstances that may reasonably be taken to indicate that the parties to it desire it to be heard only by themselves, but does not include a conversation made in any circumstances in which the parties to it ought reasonably to expect that it may be overheard by someone else;

S. 3(1) def. of *protected information* inserted by No. 26/2004 s. 5(1)(a).

protected information has the meaning given in section 30D;

S. 3(1) def. of *Public Interest Monitor* inserted by No. 72/2011 s. 30.

Public Interest Monitor means a Public Interest Monitor within the meaning of the **Public Interest Monitor Act 2011**;

S. 3(1) def. of *public officer* inserted by No. 26/2004 s. 5(1)(a).

public officer means a person employed by, or holding an office established by or under a law of, this jurisdiction or a person employed by a public authority of this jurisdiction, and includes a law enforcement officer;

S. 3(1) def. of *public place* inserted by No. 25/2009 s. 34(a).

public place has the same meaning as it has in section 3 of the **Summary Offences Act 1966**;

S. 3(1) def. of *record* amended by No. 26/2004 s. 5(1)(h).

record includes—

- (a) an audio, visual or audio visual record; and
- (b) a record in digital form; or
- (c) a documentary record prepared from a record referred to in paragraph (a) or (b);

relevant application means an application referred to in section 12A;

S. 3(1) def. of *relevant application* inserted by No. 72/2011 s. 30.

relevant offence means—

S. 3(1) def. of *relevant offence* inserted by No. 26/2004 s. 5(1)(a).

- (a) an offence against the law of this jurisdiction punishable by a maximum term of imprisonment of 3 years or more; or
- (b) an offence against the law of this jurisdiction that is prescribed by the regulations for the purposes of this definition;

relevant proceeding means—

S. 3(1) def. of *relevant proceeding* inserted by No. 26/2004 s. 5(1)(a), amended by No. 77/2008 s. 129(Sch. 2 item 25).

- (a) the prosecution of a person for an offence;
- (b) a bail application or a review of a decision to grant or refuse a bail application;
- (c) a proceeding with a view to the committal of a person to stand for trial for an offence;
- (d) a proceeding for the confiscation, forfeiture or restraint of property or for the imposition of a pecuniary penalty in connection with the commission or alleged commission of an offence, or a proceeding related or ancillary to such a proceeding;
- (e) a proceeding for the protection of a child or intellectually impaired person;
- (f) a proceeding concerning the validity of a warrant, emergency authorisation, corresponding warrant or

corresponding emergency
authorisation;

- (g) a disciplinary proceeding against a public officer;
- (h) a coronial inquest or investigation if, in the opinion of the coroner, the event that is the subject of the inquest or investigation may have resulted from the commission of an offence;
- (i) a proceeding under section 13 of the Mutual Assistance in Criminal Matters Act 1987 of the Commonwealth in relation to a criminal matter that concerns an offence against the laws of the foreign country that made the request resulting in the proceeding;
- (j) a proceeding for the taking of evidence under section 43 of the Extradition Act 1988 of the Commonwealth;
- (k) a proceeding for the extradition of a person from another jurisdiction to this jurisdiction;
- (l) a proceeding under Division 1 of Part 4 of the International War Crimes Tribunals Act 1995 of the Commonwealth;
- (m) a proceeding of the International Criminal Court;

relevant warrant, in relation to an assistance order, means the warrant in relation to which the order is applied for;

remote application for a warrant, means an application referred to in section 16 or 20D;

S. 3(1) def. of
*remote
application*
inserted by
No. 26/2004
s. 5(1)(a).

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<p><i>report</i>, in relation to a conversation or activity, includes a report of the substance, meaning or purport of the conversation or activity;</p>	<p>S. 3(1) def. of <i>report</i> amended by No. 26/2004 s. 5(1)(i).</p>
<p><i>retrieval warrant</i> means a warrant issued under Subdivision 3 of Division 1 of Part 4;</p>	<p>S. 3(1) def. of <i>retrieval warrant</i> inserted by No. 26/2004 s. 5(1)(a).</p>
<p>* * * * *</p>	<p>S. 3(1) def. of <i>Secretary</i> repealed by No. 56/2003 s. 8(1)(b).</p>
<p><i>senior officer</i> means—</p> <p>(a) in relation to Victoria Police—</p> <p>(i) the Chief Commissioner of Police; or</p> <p>(ii) a Deputy Commissioner of Police; or</p> <p>(iii) an Assistant Commissioner of Police; or</p> <p>(iv) a person appointed under subsection (3);</p> <p>(b) in relation to the Australian Crime Commission—</p> <p>(i) the Chief Executive Officer; or</p> <p>(ii) the Director National Operations; or</p> <p>(iii) the General Manager National Operations; or</p> <p>(iv) a member of staff of the Australian Crime Commission who is an SES employee or acting</p>	<p>S. 3(1) def. of <i>senior law enforcement officer</i> amended by Nos 18/2002 s. 24(1)(b), 52/2003 s. 52(Sch. 1 item 11(1)(d)), 56/2003 s. 8(1)(c), 63/2004 s. 9(1)(d), substituted as def. of <i>senior officer</i> by No. 26/2004 s. 5(1)(j) (as amended by No. 63/2004 s. 13(2)(c)), amended by Nos 13/2012 s. 13(1)(d) (2)(e), 24/2014 s. 82(5), 27/2016 s. 40(1)(d), 68/2016 s. 171(e).</p>

SES employee (within the meaning of the Australian Crime Commission Act 2002 of the Commonwealth) and who holds a position that is prescribed by the regulations for the purposes of this definition;

- (c) in relation to the Department of Environment, Land, Water and Planning—the Secretary to that department;
- (d) in relation to the Victorian Fisheries Authority—the chief executive officer appointed by the Board of the Victorian Fisheries Authority;
- (da) in relation to the IBAC—
 - (i) the Commissioner; or
 - (ii) a prescribed IBAC Officer who holds a position, or is a member of a class, that is prescribed by the regulations for the purposes of this definition;
- (e) in relation to the Game Management Authority—the Chief Executive Officer appointed by the Chairperson of the Game Management Authority;

S. 3(1) def. of *serious drug offence* amended by Nos 61/2001 s. 16(2)(a)–(d), 35/2002 s. 28(Sch. item 6.1(a)(b)), 3/2019 s. 22.

serious drug offence means an offence against any of the following sections of the **Drugs, Poisons and Controlled Substances Act 1981**—

- (a) section 71 (trafficking in a quantity of a drug or drugs of dependence that is not less than the large commercial quantity applicable to that drug or those drugs);

- (ab) section 71AA(1) (trafficking in a quantity of a drug or drugs of dependence that is not less than the commercial quantity applicable to that drug or those drugs);
- (aba) section 71AA(2) (trafficking in a quantity of a drug or drugs of dependence that is not less than the commercial quantity applicable to that drug or those drugs for the benefit of or at the direction of a criminal organisation);
- (ac) section 71AB (trafficking in a drug of dependence to a child);
- (ad) section 71AC (trafficking in a drug of dependence);
- (b) section 71A (possession of substance, etc., for trafficking in a drug of dependence);
- (c) section 71B(1) (supply of drug of dependence to a child);
- (d) section 72 (cultivation of a narcotic plant in a quantity of a drug of dependence, being a narcotic plant, that is not less than the large commercial quantity applicable to that narcotic plant);
- (da) section 72A (cultivation of a narcotic plant in a quantity of a drug of dependence, being a narcotic plant, that is not less than the commercial quantity applicable to that narcotic plant);
- (db) section 72B (cultivation of a narcotic plant for a purpose related to trafficking in that narcotic plant);

- (e) section 73(1) (possession of a drug of dependence) other than—
 - (i) an offence committed in relation to a quantity of cannabis or tetrahydrocannabinol that is not more than the small quantity applicable to cannabis or tetrahydrocannabinol under section 70 of that Act and that is not committed for any purpose related to trafficking in cannabis or tetrahydrocannabinol; or
 - (ii) an offence that is not committed for any purpose related to trafficking in a drug of dependence;
- (f) section 79(1) (conspiracy) in circumstances where the conspiracy is to commit an offence referred to in paragraph (a), (ab), (aba), (ac), (ad), (b), (c), (d), (da), (db) or (e);
- (g) section 80(1) (aiding and abetting, etc.) in circumstances where the offence aided, abetted, counselled, procured, solicited or incited is an offence referred to in paragraph (a), (ab), (aba), (ac), (ad), (b), (c), (d), (da), (db) or (e)—

or an offence against any of the following provisions of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001**—

- (h) section 71(1) (trafficking in a drug of dependence);

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- (i) section 72(1) (cultivation of narcotic plants) other than an offence that is not committed for any purpose related to trafficking in a narcotic plant;
- (j) section 79(1) (conspiracy) in circumstances where the conspiracy is to commit an offence referred to in paragraph (h) or (i);
- (k) section 80(1) (aiding and abetting etc.) in circumstances where the offence that is aided, abetted, counselled, procured, solicited or incited is an offence referred to in paragraph (h) or (i);

* * * * *

S. 3(1) def. of *Special Investigations Monitor* inserted by No. 26/2004 s. 5(1)(a) (as amended by No. 63/2004 s. 13(1)(d)), repealed by No. 82/2012 s. 138(2).

surveillance device means—

- (a) a data surveillance device, a listening device, an optical surveillance device or a tracking device; or
- (b) a device that is a combination of any 2 or more of the devices referred to in paragraph (a); or
- (c) a device of a kind prescribed by the regulations;

S. 3(1) def. of *surveillance device* substituted by No. 26/2004 s. 5(1)(k).

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S. 3(1) def. of
surveillance device warrant
inserted by
No. 26/2004
s. 5(1)(a).

surveillance device warrant means a warrant issued under Subdivision 2 of Division 1 of Part 4 or under section 30(3);

S. 3(1) def. of
tablet computer
inserted by
No. 54/2017
s. 3.

tablet computer means a mobile computer that contains a camera and a microphone;

S. 3(1) def. of
this jurisdiction
inserted by
No. 26/2004
s. 5(1)(a).

this jurisdiction means Victoria;

tracking device means an electronic device the primary purpose of which is to determine the geographical location of a person or an object;

S. 3(1) def. of
unsworn application
inserted by
No. 26/2004
s. 5(1)(a).

unsworn application for a warrant, means an application referred to in section 15(5) or 20C(5);

S. 3(1) def. of
use
inserted by
No. 26/2004
s. 5(1)(a).

use of a surveillance device includes use of the device to record a conversation or other activity;

S. 3(1) def. of
vehicle
amended by
No. 25/2009
s. 34(b).

vehicle includes motor vehicle, aircraft and vessel;

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*	*	*	*	*	S. 3(1) def. of <i>Victoria Police</i> inserted by No. 26/2004 s. 5(1)(a), repealed by No. 37/2014 s. 10(Sch. item 163.1 (a)(iii)).
<p><i>Victorian Fisheries Authority</i> means the Victorian Fisheries Authority established under Part 2 of the Victorian Fisheries Authority Act 2016;</p>					S. 3(1) def. of <i>Victorian Fisheries Authority</i> inserted by No. 68/2016 s. 171(a).
<p><i>Victorian Inspectorate</i> has the same meaning as it has in the Victorian Inspectorate Act 2011;</p>					S. 3(1) def. of <i>Victorian Inspectorate</i> inserted by No. 82/2012 s. 138(1).
<p><i>warrant</i> (except in sections 33, 34 and 35) means surveillance device warrant or retrieval warrant.</p>					S. 3(1) def. of <i>warrant</i> substituted by No. 26/2004 s. 5(1)(l).
<p>(2) The Chief Commissioner of Police may appoint in writing police officers of or above the rank of inspector to be authorised police officers for the purpose of approving applications for warrants and authorising the use of surveillance devices under warrants.</p>					S. 3(2) amended by Nos 26/2004 s. 5(2)(a), 37/2014 s. 10(Sch. item 163.1(b)).
<p>(3) Subject to subsection (4), the Chief Commissioner of Police may appoint in writing authorised police officers to be senior officers in relation to Victoria Police.</p>					S. 3(3) amended by No. 26/2004 s. 5(2)(b).
<p>(4) The Chief Commissioner of Police may appoint an authorised police officer below the rank of commander to be a senior officer only if satisfied</p>					S. 3(4) amended by No. 26/2004 s. 5(2)(c).

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that the special nature of the officer's
responsibilities requires that appointment.

S. 3(5)
substituted by
No. 56/2003
s. 8(2),
amended by
Nos 108/2004
s. 117(1)
(Sch. 3
item 195),
26/2004
s. 5(2)(d),
repealed by
No. 27/2016
s. 40(2).

* * * * *

S. 3(6)
inserted by
No. 56/2003
s. 8(2),
amended by
Nos 108/2004
s. 117(1)
(Sch. 3
item 195),
26/2004
s. 5(2)(e),
repealed by
No. 27/2016
s. 40(2).

* * * * *

S. 3(7)
inserted by
No. 26/2004
s. 5(3).

- (7) For the purposes of this Act, an investigation into an offence against the law of this jurisdiction is taken to be conducted in this jurisdiction (whether or not it is also conducted in another jurisdiction) if a law enforcement officer participates in the investigation.

Note

Subsection (7) is intended to cover the situation where an officer of this jurisdiction is conducting or participating in an investigation wholly in another jurisdiction for the purposes of an offence of this jurisdiction (eg: a Victorian officer is investigating a conspiracy to import drugs into Victoria from NSW, and all the evidence of the offence is in NSW).

- (8) In this Act, a reference to the law enforcement officer primarily responsible for executing a warrant is a reference to the person named in the warrant as such a person, whether or not that person is physically present for any step in the execution of the warrant.

S. 3(8)
inserted by
No. 26/2004
s. 5(4).

4 Act binds the Crown

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

5 Act not to apply to certain Commonwealth agents

Nothing in this Act applies to anything done in the course of duty by—

- (a) a member or member of staff of the Australian Competition and Consumer Commission;
- (b) the Director General or an officer or employee of the Australian Security Intelligence Organisation;
- (c) a member of the Australian Federal Police, other than in his or her capacity as a member of staff of the Australian Crime Commission;
- (d) an officer of customs within the meaning of the Customs Act 1901 of the Commonwealth;
- (e) the Minister administering the Migration Act 1958 of the Commonwealth or the Secretary or an officer or employee in the Department within the meaning of that Act.

S. 5(c)
amended by
No. 52/2003
s. 52(Sch. 1
item 11(2)).

5A Application of Act

- (1) This Act is not intended to limit a discretion that a court has—
- (a) to admit or exclude evidence in any proceeding; or

S. 5A
inserted by
No. 26/2004
s. 6.

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- (b) to stay criminal proceedings in the interests of justice.
- (2) For the avoidance of doubt, it is intended that a warrant may be issued, or an emergency authorisation given, in this jurisdiction under this Act for the installation, use, maintenance or retrieval of a surveillance device in this jurisdiction or a participating jurisdiction or both.
- (3) Subsection (2) is subject to sections 19(7) and 27(5).

Part 2—Regulation of installation, use and maintenance of surveillance devices

6 Regulation of installation, use and maintenance of listening devices

- (1) Subject to subsection (2), a person must not knowingly install, use or maintain a listening device to overhear, record, monitor or listen to a private conversation to which the person is not a party, without the express or implied consent of each party to the conversation.

S. 6(1)
amended by
No. 26/2004
s. 7(a).

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate,
1200 penalty units.

Note

Section 32A applies to an offence against this subsection.

Note to s. 6(1)
inserted by
No. 13/2013
s. 42(1).

- (2) Subsection (1) does not apply to—

- (a) the installation, use or maintenance of a listening device in accordance with a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or
- (b) the installation, use or maintenance of a listening device in accordance with a law of the Commonwealth; or
- (c) the use of a listening device by a law enforcement officer to monitor or record a private conversation to which he or she is not a party if—

S. 6(2)(a)
amended by
No. 26/2004
s. 7(b).

S. 6(2)(b)
amended by
No. 26/2004
s. 7(c).

S. 6(2)(c)
inserted by
No. 26/2004
s. 7(d).

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maintenance of surveillance devices

S. 6(2)(c)(iii)
amended by
No. 54/2017
s. 4(1)(a).

- (i) at least one party to the conversation consents to the monitoring or recording; and
- (ii) the law enforcement officer is acting in the course of his or her duty; and
- (iii) the law enforcement officer reasonably believes that it is necessary to monitor or record the conversation for the protection of any person's safety; or

S. 6(2)(d)
inserted by
No. 54/2017
s. 4(1)(b).

- (d) the overt use of a body-worn camera or a tablet computer by a police officer or an ambulance officer acting in the course of the officer's duty and the recording of a private conversation to which the officer is not a party is inadvertent, unexpected or incidental to that use; or

S. 6(2)(e)
inserted by
No. 54/2017
s. 4(1)(b).

- (e) the overt use of a body-worn camera or a tablet computer by a prescribed person, or a person belonging to a prescribed class of persons, acting in the course of the person's duties in the prescribed circumstances and the recording of a private conversation to which the person is not a party is inadvertent, unexpected or incidental to that use.

S. 6(3)
inserted by
No. 54/2017
s. 4(2).

- (3) For the purposes of subsection (2)(d) and (e), a police officer, an ambulance officer, a prescribed person or a person belonging to a prescribed class of persons is not required to inform a person that the person is being recorded with a body-worn camera or a tablet computer.

7 Regulation of installation, use and maintenance of optical surveillance devices

S. 7(1)
amended by
No. 26/2004
s. 7(a).

- (1) Subject to subsection (2), a person must not knowingly install, use or maintain an optical surveillance device to record visually or observe a private activity to which the person is not a party,

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No. 21 of 1999
Part 2—Regulation of installation, use and
maintenance of surveillance devices

without the express or implied consent of each party to the activity.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate,
1200 penalty units.

Note

Section 32A applies to an offence against this subsection.

Note to s. 7(1)
inserted by
No. 13/2013
s. 42(1).

(2) Subsection (1) does not apply to—

- (a) the installation, use or maintenance of an optical surveillance device in accordance with a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or
- (b) the installation, use or maintenance of an optical surveillance device in accordance with a law of the Commonwealth; or
- (c) the installation, use or maintenance of an optical surveillance device by a law enforcement officer in the performance of his or her duty on premises if—
 - (i) an occupier of the premises authorises that installation, use or maintenance; and
 - (ii) the installation, use or maintenance is reasonably necessary for the protection of any person's lawful interests; or
- (d) the overt use of a body-worn camera or a tablet computer by a police officer or an ambulance officer acting in the course of the officer's duty and the recording of a private activity to which the officer is not a party is

S. 7(2)(a)
amended by
No. 26/2004
s. 7(b).

S. 7(2)(c)(ii)
amended by
No. 54/2017
s. 5(1)(a).

S. 7(2)(d)
inserted by
No. 54/2017
s. 5(1)(b).

inadvertent, unexpected or incidental to that use; or

S. 7(2)(e)
inserted by
No. 54/2017
s. 5(1)(b).

- (e) the overt use of a body-worn camera or a tablet computer by a prescribed person, or a person belonging to a prescribed class of persons, acting in the course of the person's duties in the prescribed circumstances and the recording of a private activity to which the person is not a party is inadvertent, unexpected or incidental to that use.

S. 7(3)
inserted by
No. 54/2017
s. 5(2).

- (3) For the purposes of subsection (2)(d) and (e), a police officer, an ambulance officer, a prescribed person or a person belonging to a prescribed class of persons is not required to inform a person that the person is being recorded with a body-worn camera or a tablet computer.

8 Regulation of installation, use and maintenance of tracking devices

S. 8(1)
amended by
No. 26/2004
s. 7(a).

- (1) Subject to subsection (2), a person must not knowingly install, use or maintain a tracking device to determine the geographical location of a person or an object—
- (a) in the case of a device to determine the location of a person, without the express or implied consent of that person; or
- (b) in the case of a device to determine the location of an object, without the express or implied consent of a person in lawful possession or having lawful control of that object.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate,
1200 penalty units.

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maintenance of surveillance devices

Note

Section 32A applies to an offence against this subsection.

Note to s. 8(1)
inserted by
No. 13/2013
s. 42(1).

(2) Subsection (1) does not apply to—

- | | |
|---|--|
| (a) the installation, use or maintenance of a tracking device in accordance with a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or | S. 8(2)(a)
amended by
No. 26/2004
s. 7(b). |
| (aa) the installation, use or maintenance of a tracking device in accordance with an order made under the Serious Offenders Act 2018 ; or | S. 8(2)(aa)
inserted by
No. 91/2009
s. 219(Sch. 3
item 4),
substituted by
No. 27/2018
s. 366. |
| (ab) the installation, use or maintenance of a tracking device in accordance with a parole order under the Corrections Act 1986 ; or | S. 8(2)(ab)
inserted by
No. 15/2013
s. 8. |
| (ac) the installation, use or maintenance of an electronic monitoring device in accordance with a community correction order under the Sentencing Act 1991 ; or | S. 8(2)(ac)
inserted by
No. 32/2013
s. 65. |
| (ad) the installation, use or maintenance of a tracking device in accordance with an order of the Governor of a prison under section 30 of the Corrections Act 1986 ; or | S. 8(2)(ad)
inserted by
No. 41/2015
s. 10. |
| (b) the installation, use or maintenance of a tracking device in accordance with a law of the Commonwealth. | |

**9 Regulation of installation, use and maintenance of
data surveillance devices by law enforcement
officers**

- (1) Subject to subsection (2), a law enforcement officer must not knowingly install, use or maintain a data surveillance device to record or monitor the input of information into, or the output of information from, a computer without the express or implied consent of the person on whose behalf that information is being input or output.

Penalty: Level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum) or both.

- (2) Subsection (1) does not apply to—

- (a) the installation, use or maintenance of a data surveillance device in accordance with a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or
- (b) the installation, use or maintenance of a data surveillance device in accordance with a law of the Commonwealth.

S. 9(2)(a)
amended by
No. 26/2004
s. 7(b).

S. 10
repealed by
No. 26/2004
s. 7(e).

* * * * *

Part 2A—Workplace privacy

Pt 2A
(Heading and
ss 9A–9D)
inserted by
No. 70/2006
s. 3.

9A Definitions

S. 9A
inserted by
No. 70/2006
s. 3.

In this Part—

employer means a person, unincorporated body or firm that—

- (a) employs a person under a contract of service or apprenticeship; or
- (b) employs a person under the **Public Administration Act 2004** or any other Act; or
- (c) engages a person under a contract for services; or
- (d) engages a person to perform any work the remuneration for which is based wholly or partly on commission; or
- (e) engages a person to perform work on an unpaid or voluntary basis;

firm has the same meaning as in the **Partnership Act 1958** but does not include an incorporated limited partnership within the meaning of Part 5 of that Act;

washroom includes a room fitted with bathing or showering facilities;

worker means a person employed or engaged by an employer, in a manner set out in the definition of *employer*, but does not include a person who is employed or engaged by another person to perform services in connection with that person's family or domestic affairs;

workplace means any place where workers perform work.

S. 9B
inserted by
No. 70/2006
s. 3.

9B Prohibition on certain uses of optical surveillance devices or listening devices

- (1) Subject to subsection (2), an employer must not knowingly install, use or maintain an optical surveillance device or a listening device to observe, listen to, record or monitor the activities or conversations of a worker in a toilet, washroom, change room or lactation room in the workplace.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In any other case, 1200 penalty units.

Note to
s. 9B(1)
inserted by
No. 13/2013
s. 42(1).

Note

Section 32A applies to an offence against this subsection.

- (2) Subsection (1) does not apply to the installation, use or maintenance of an optical surveillance device or a listening device—
- (a) in accordance with a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or
 - (b) in accordance with a law of the Commonwealth; or
 - (c) if required by a condition on a licence granted under the **Liquor Control Reform Act 1998**.

9C Prohibition on communication or publication of activities or conversations permitted to be observed etc.

S. 9C
inserted by
No. 70/2006
s. 3.

- (1) Subject to subsection (2), a person must not knowingly communicate or publish a record or report of an activity or conversation observed, listened to, recorded or monitored by the use of an optical surveillance device or a listening device in the circumstances referred to in paragraph (a), (b) or (c) of section 9B(2).

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In any other case, 1200 penalty units.

Note

Section 32A applies to an offence against this subsection.

Note to
s. 9C(1)
inserted by
No. 13/2013
s. 42(1).

- (2) Subsection (1) does not apply—
- (a) if the activity or conversation was observed, listened to, recorded or monitored in the circumstances referred to in section 9B(2)(a), to a communication or publication of protected information; or
 - (b) if the activity or conversation was observed, listened to, recorded or monitored in the circumstances referred to in section 9B(2)(b), to a communication or publication authorised by a law of the Commonwealth relating to the security of the Commonwealth; or

- (c) if the activity or conversation was observed, listened to, recorded or monitored in the circumstances referred to in section 9B(2)(c), to a communication or publication authorised by or under the **Liquor Control Reform Act 1998** or the licence granted under that Act.

S. 9D
inserted by
No. 70/2006
s. 3.

9D Offences by unincorporated bodies or firms

If this Part provides that an employer that is an unincorporated body or a firm is guilty of an offence, that reference to the employer must—

- (a) in the case of an unincorporated body, be read as a reference to each member of the committee of management of the body; and
- (b) in the case of a firm, be read as a reference to each member of the partnership.

Part 3—Restriction on communication and publication of private conversations and activities

11 Prohibition on communication or publication of private conversations or activities

- (1) Subject to subsection (2), a person must not knowingly communicate or publish a record or report of a private conversation or private activity that has been made as a direct or indirect result of the use of a listening device, an optical surveillance device or a tracking device.

**S. 11(1)
amended by
No. 26/2004
s. 8(a).**

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate,
1200 penalty units.

Note

Section 32A applies to an offence against this subsection.

**Note to
s. 11(1)
inserted by
No. 13/2013
s. 42(1).**

- (2) Subsection (1) does not apply—
- (a) to a communication or publication made with the express or implied consent of each party to the private conversation or private activity; or
 - (b) to a communication or publication that is no more than is reasonably necessary—
 - (i) in the public interest; or
 - (ii) for the protection of the lawful interests of the person making it; or
 - (c) to a communication or publication in the course of legal proceedings or disciplinary proceedings; or

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Part 3—Restriction on communication and publication of private
conversations and activities

S. 11(2)(ca)
inserted by
No. 26/2004
s. 8(b).

(ca) to a communication or publication of
protected information; or

S. 11(2)(d)(i)
amended by
No. 26/2004
s. 8(c)(i).

(d) to a communication or publication made by a
law enforcement officer—

(i) to a person authorised by the chief
officer of the law enforcement agency
and for the purpose of investigating or
prosecuting an offence; or

(ii) to the occupier of premises of a record
or report of a private activity that has
been made as a direct or indirect result
of the use on those premises of an
optical surveillance device in the
circumstances referred to in
section 7(2)(c); or

S. 11(2)(d)(iii)
amended by
Nos 9/2008
s. 45, 47/2014
s. 313.

(iii) to the sheriff or to a person employed
in the Department of Justice in the
administration of the **Infringements
Act 2006** or the **Fines Reform
Act 2014**; or

(iv) otherwise in the performance of his or
her duty; or

S. 11(2)(e)
amended by
Nos 26/2004
s. 8(c)(ii),
37/2014
s. 10(Sch.
item 163.2).

(e) to a communication to a police officer by a
person authorised to do so by an authorised
police officer; or

(f) to a communication or publication authorised
by a law of the Commonwealth relating to
the security of the Commonwealth.

**12 Communication and publication of information
from the use of a data surveillance device**

(1) Subject to subsection (2), a law enforcement officer must not communicate or publish any information regarding the input of information into, or the output of information from, a computer that has been obtained as a direct or indirect result of the use of a data surveillance device.

Penalty: Level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum) or both.

(2) Subsection (1) does not apply—

- (a) to a communication or publication made with the express or implied consent of the person on whose behalf the information is input into or output from the computer; or
- (b) to a communication or publication made in the course of legal proceedings or disciplinary proceedings; or

(ba) to a communication or publication of protected information; or

S. 12(2)(ba)
inserted by
No. 26/2004
s. 8(d).

(c) to a communication or publication made by a law enforcement officer—

- (i) to a person authorised by the chief officer of the law enforcement agency and for the purpose of investigating or prosecuting an offence; or
- (ii) otherwise in the performance of his or her duty; or

S. 12(2)(c)(i)
amended by
No. 26/2004
s. 8(e).

(d) to a communication or publication authorised by a law of the Commonwealth relating to the security of the Commonwealth.

Part 4—Authorisations for the use of surveillance devices

Pt 4 Div. 1AA
(Heading and
ss 12A–12D)
inserted by
No. 72/2011
s. 31.

Division 1AA—Role of Public Interest Monitor

S. 12A
inserted by
No. 72/2011
s. 31.

12A Application of Division 1AA

This Division applies if a person is required under this Part to give notice to the Public Interest Monitor of an application for—

- (a) a surveillance device warrant; or
- (b) an extension or variation of a surveillance device warrant; or
- (c) a revocation of a surveillance device warrant; or
- (d) a retrieval warrant; or
- (e) a revocation of a retrieval warrant; or
- (f) an assistance order; or
- (g) approval of an emergency authorisation.

S. 12B
inserted by
No. 72/2011
s. 31.

12B Information to be given to Public Interest Monitor

- (1) If the application is made in writing, the applicant must give the Public Interest Monitor a copy of the application and any affidavit required to be given to the Supreme Court judge or a magistrate in support of the application.
- (2) If the application is to be made by telephone, the applicant must give the Public Interest Monitor the information required to be given to the Supreme Court judge or a magistrate on a telephone application.

- (3) An obligation to maintain secrecy in relation to, or that otherwise restricts, the provision of information to the Public Interest Monitor, whether imposed under an Act or by a rule of law, does not apply to the provision of information under this Division.

12C Full disclosure to Public Interest Monitor

S. 12C
inserted by
No. 72/2011
s. 31.

- (1) The applicant must fully disclose to the Public Interest Monitor all matters of which the applicant is aware that are adverse to the application.
- (2) The applicant must not knowingly or recklessly fail to comply with subsection (1).

Penalty: Level 9 imprisonment (6 months maximum) or a level 9 fine (60 penalty units) or both.

12D Role of Public Interest Monitor

S. 12D
inserted by
No. 72/2011
s. 31.

- (1) The Public Interest Monitor is entitled—
- (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 to the Supreme Court judge or magistrate as to the appropriateness of granting the application.

- (2) Without limiting subsection (1), the Public Interest Monitor is entitled to make submissions to the Supreme Court judge or magistrate in the presence of the judge or magistrate or by phone, fax, email or any other reasonable way.
- (3) As soon as practicable after the application is determined, the Public Interest Monitor must return to the applicant any documents given by the applicant to the Public Interest Monitor under section 12B or 12C in relation to the application.

Division 1—Warrants

Subdivision 1—Introduction

Pt 4 Div. 1
(Heading and
ss 13–20)
substituted as
Pt 4 Div. 1
(Heading and
ss 13–20H) by
No. 26/2004
s. 9.

13 Types of warrant

- (1) The following types of warrant may be issued under this Division—
 - (a) a surveillance device warrant;
 - (b) a retrieval warrant.
- (2) A warrant may be issued in respect of one or more kinds of surveillance device.

S. 13
substituted by
No. 26/2004
s. 9.

14 Who may issue warrants?

- (1) A Supreme Court judge may issue any warrant under this Division.
- (2) A magistrate may issue—
 - (a) a surveillance device warrant that authorises the use of a tracking device only; or
 - (b) a retrieval warrant in respect of a tracking device authorised under a warrant referred to in paragraph (a), if a magistrate issued the original warrant.

S. 14
substituted by
No. 26/2004
s. 9.

Subdivision 2—Surveillance device warrants

15 Application for surveillance device warrant

**S. 15
substituted by
No. 26/2004
s. 9.**

- (1) A law enforcement officer (or another person on his or her behalf) may apply for the issue of a surveillance device warrant if the law enforcement officer on reasonable grounds suspects or believes that—
 - (a) an offence has been, is being, is about to be or is likely to be committed; and
 - (b) the use of a surveillance device is or will be necessary for the purpose of an investigation into that offence or of enabling evidence or information to be obtained of the commission of that offence or the identity or location of the offender.
- (2) An application may be made only with the approval of—
 - (a) a senior officer of the law enforcement agency concerned; or
 - (b) an authorised police officer.
- (3) The application may be made to—
 - (a) a Supreme Court judge in any case; or
 - (b) a magistrate in the case of an application for a surveillance device warrant authorising the use of a tracking device only.
- (4) An application—
 - (a) must specify—
 - (i) the name of the applicant; and
 - (ii) the nature and duration of the warrant sought, including the kind of surveillance device sought to be authorised; and

(b) subject to this section, must be supported by an affidavit setting out the grounds on which the warrant is sought.

S. 15(5)
amended by
No. 6/2018
s. 68(Sch. 2
item 121.1).

(5) If a law enforcement officer believes that—

(a) the immediate use of a surveillance device is necessary for a purpose referred to in subsection (1)(b); and

S. 15(5)(b)
amended by
No. 6/2018
s. 68(Sch. 2
item 121.1).

(b) it is impracticable for an affidavit to be prepared or sworn or affirmed before an application for a warrant is made—

an application for a warrant may be made before an affidavit is prepared or sworn or affirmed.

(6) If subsection (5) applies, the applicant must—

(a) provide as much information as the judge or magistrate considers is reasonably practicable in the circumstances; and

S. 15(6)(b)
amended by
No. 6/2018
s. 68(Sch. 2
item 121.2).

(b) not later than the day following the making of the application, send a duly sworn or affirmed affidavit to the judge or magistrate, whether or not a warrant has been issued.

S. 15(6A)
inserted by
No. 72/2011
s. 32.

(6A) The applicant must notify a Public Interest Monitor of the application in accordance with the regulations under the **Public Interest Monitor Act 2011**.

(7) An application for a warrant is not to be heard in open court.

S. 16
substituted by
No. 26/2004
s. 9.

16 Remote application

(1) If a law enforcement officer believes that it is impracticable for an application for a surveillance device warrant to be made in person, the application may be made under section 15 by telephone, fax, e-mail or any other means of communication.

- (2) If transmission by fax is available and an affidavit has been prepared, the person applying must transmit a copy of the affidavit, whether sworn or affirmed, or unsworn or not affirmed, to the judge or magistrate who is to determine the application.

S. 16(2)
amended by
No. 6/2018
s. 68(Sch. 2
item 121.3).

17 Determining the application

S. 17
substituted by
No. 26/2004
s. 9.

- (1) A Supreme Court judge or magistrate may issue a surveillance device warrant if satisfied—
- (a) that there are reasonable grounds for the suspicion or belief founding the application for the warrant; and
 - (b) in the case of an unsworn application—that it would have been impracticable for an affidavit to have been prepared or sworn or affirmed before the application was made; and
 - (c) in the case of a remote application—that it would have been impracticable for the application to have been made in person.
- (2) In determining whether a surveillance device warrant should be issued, the judge or magistrate must have regard to—
- (a) the nature and gravity of the alleged offence in respect of which the warrant is sought; and
 - (b) the extent to which the privacy of any person is likely to be affected; and
 - (c) the existence of any alternative means of obtaining the evidence or information sought to be obtained and the extent to which those means may assist or prejudice the investigation; and
 - (d) the evidentiary or intelligence value of any information sought to be obtained; and

S. 17(1)(b)
amended by
No. 6/2018
s. 68(Sch. 2
item 121.4).

S. 17(2)(e)
amended by
No. 72/2011
s. 33(1).

(e) any previous warrant sought or issued under this Division or a corresponding law (if known) in connection with the same offence; and

S. 17(2)(f)
inserted by
No. 72/2011
s. 33(2).

(f) any submissions made by a Public Interest Monitor.

S. 18
substituted by
No. 26/2004
s. 9.

18 What must a surveillance device warrant contain?

(1) A surveillance device warrant must—

(a) state that the judge or magistrate is satisfied of the matters referred to in section 17(1) and has had regard to the matters referred to in section 17(2); and

(b) specify—

(i) the name of the applicant; and

(ii) the alleged offence in respect of which the warrant is issued; and

(iii) the date the warrant is issued; and

(iv) the kind of surveillance device authorised to be used; and

(v) if the warrant authorises the use of a surveillance device on premises—the premises on which the use of the surveillance device is authorised; and

(vi) if the warrant authorises the use of a surveillance device in or on an object or class of object—the object or class of object in or on which the use of the surveillance device is authorised; and

(vii) if the warrant authorises the use of a surveillance device in respect of the conversations, activities or

- geographical location of a person—the name of the person (if known); and
- (viii) the period during which the warrant is in force, being a period not exceeding 90 days; and
 - (ix) the name of the law enforcement officer primarily responsible for executing the warrant; and
 - (x) any conditions subject to which premises may be entered, or a surveillance device may be used, under the warrant; and
 - (xi) the time within which a report in respect of the warrant must be made to the judge or magistrate under section 30K.
- (2) In the case of a warrant referred to in subsection (1)(b)(vii), if the identity of the person is unknown, the warrant must state that fact.
- (3) A warrant must be signed by the person issuing it and include their name.
- (4) If the judge or magistrate issues a warrant on a remote application—
- (a) the judge or magistrate must inform the applicant of—
 - (i) the terms of the warrant; and
 - (ii) the date on which and the time at which the warrant was issued—and cause those details to be entered in a register kept by the judge or magistrate for the purpose; and
 - (b) the judge or magistrate must provide the applicant with a copy of the warrant as soon as practicable.

S. 19
substituted by
No. 26/2004
s. 9.

19 What a surveillance device warrant authorises

- (1) A surveillance device warrant may authorise, as specified in the warrant, any one or more of the following—
 - (a) the use of a surveillance device on specified premises;
 - (b) the use of a surveillance device in or on a specified object or class of object;
 - (c) the use of a surveillance device in respect of the conversations, activities or geographical location of a specified person or a person whose identity is unknown.
- (2) A surveillance device warrant authorises—
 - (a) for a warrant of a kind referred to in subsection (1)(a)—
 - (i) the installation, use and maintenance of a surveillance device of the kind specified in the warrant on the specified premises; and
 - (ii) the entry, by force if necessary, onto the premises, or other specified premises adjoining or providing access to the premises, for any of the purposes referred to in subparagraph (i) or subsection (3);
 - (b) for a warrant of a kind referred to in subsection (1)(b)—
 - (i) the installation, use and maintenance of a surveillance device of the kind specified in the warrant in or on the specified object or an object of the specified class; and

- (ii) the entry, by force if necessary, onto any premises where the object, or an object of the class, is reasonably believed to be or is likely to be, or other premises adjoining or providing access to those premises, for any of the purposes referred to in subparagraph (i) or subsection (3);
- (c) for a warrant of a kind referred to in subsection (1)(c)—
 - (i) the installation, use and maintenance of a surveillance device of the kind specified in the warrant, on premises where the person is reasonably believed to be or likely to be; and
 - (ii) the entry, by force if necessary, onto the premises referred to in subparagraph (i), or other premises adjoining or providing access to those premises, for any of the purposes referred to in subparagraph (i) or subsection (3).
- (3) Each surveillance device warrant also authorises—
 - (a) the retrieval of the surveillance device; and
 - (b) the installation, use, maintenance and retrieval of any enhancement equipment in relation to the surveillance device; and
 - (c) the temporary removal of an object from premises for the purpose of the installation, maintenance or retrieval of the surveillance device or enhancement equipment and the return of the object to the premises; and

S. 19(3)(g)
amended by
No. 3/2009
s. 16.

- (d) the breaking open of anything for the purpose of the installation, maintenance or retrieval of the surveillance device or enhancement equipment; and
 - (e) the connection of the device or equipment to an electricity supply system and the use of electricity from that system to operate the surveillance device or enhancement equipment; and
 - (f) the connection of the device or equipment to any object or system that may be used to transmit information in any form and the use of that object or system in connection with the operation of the surveillance device or enhancement equipment; and
 - (g) the provision of assistance or technical expertise by any person (whether or not a law enforcement officer) to the law enforcement officer primarily responsible for executing the warrant in the installation, use, maintenance or retrieval of the surveillance device or enhancement equipment.
- (4) A surveillance device warrant may authorise the doing of anything reasonably necessary to conceal the fact that anything has been done in relation to the installation, use, maintenance or retrieval of a surveillance device or enhancement equipment under the warrant.
- (5) A law enforcement officer may use a surveillance device under a warrant only if he or she is acting in the performance of his or her duty.
- (6) This section applies to a warrant subject to any conditions specified in the warrant.

- (7) A surveillance device warrant cannot authorise the installation or use of a surveillance device outside this jurisdiction if—
- (a) the application for the warrant is made by or on behalf of an authorised officer within the meaning of the **Conservation, Forests and Lands Act 1987**; or
 - (b) the offence in relation to which the warrant is issued is not a relevant offence.
- (8) Nothing in this section authorises the doing of anything for which a warrant would be required under the Telecommunications (Interception) Act 1979 of the Commonwealth.

20 Extension and variation of surveillance device warrant

S. 20
substituted by
No. 26/2004
s. 9.

- (1) A law enforcement officer to whom a surveillance device warrant has been issued (or another person on his or her behalf) may apply, at any time before the expiry of the warrant—
- (a) for an extension of the warrant for a period not exceeding 90 days from the day on which it would otherwise expire; or
 - (b) for a variation of any of the other terms of the warrant.
- (2) The application is to be made to—
- (a) a Supreme Court judge, if the warrant was issued by a Supreme Court judge; or
 - (b) a magistrate, if the warrant was issued by a magistrate.
- (3) Sections 15 and 16 apply, with any necessary changes, to an application under this section as if it were an application for the warrant.

- (4) The judge or magistrate may grant an application, subject to any conditions he or she thinks fit, if satisfied that the matters referred to in section 17(1) still exist, having regard to the matters in section 17(2).
- (5) If the judge or magistrate grants the application, the judge or magistrate must endorse the new expiry date or the other varied term on the original warrant.
- (6) An application may be made under this section more than once.

S. 20A
inserted by
No. 26/2004
s. 9.

20A Revocation of surveillance device warrant

- (1) A surveillance device warrant may be revoked at any time before the expiration of the period of validity specified in it by—
 - (a) a Supreme Court judge, if a Supreme Court judge issued the warrant; or
 - (b) a magistrate, if a magistrate issued the warrant.
- (2) If the circumstances set out in section 20B(2) apply in relation to a surveillance device warrant, the chief officer of the law enforcement agency must, by instrument in writing, revoke the warrant.
- (3) A judge or magistrate who revokes a warrant must give notice of the revocation to the chief officer of the law enforcement agency of which the law enforcement officer to whom the warrant was issued is a member.
- (4) A judge or magistrate or the chief officer of the law enforcement agency who revokes a warrant must give notice of the revocation to a Public Interest Monitor in accordance with the regulations under the **Public Interest Monitor Act 2011**.

S. 20A(4)
inserted by
No. 72/2011
s. 34,
amended by
No. 30/2016
s. 88.

20B Discontinuance of use of surveillance device under warrant

S. 20B
inserted by
No. 26/2004
s. 9.

- (1) This section applies if a surveillance device warrant is issued to a law enforcement officer of a law enforcement agency.
- (2) If the chief officer of the law enforcement agency is satisfied that the use of a surveillance device under the warrant is 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, the chief officer must—
 - (a) take the steps necessary to ensure that use of the surveillance device authorised by the warrant is discontinued as soon as practicable; and
 - (b) revoke the warrant under section 20A(2).
- (3) If the chief officer is notified that the warrant has been revoked by a judge or magistrate under section 20A, he or she must take the steps necessary to ensure that use of the surveillance device authorised by the warrant is discontinued immediately.
- (4) If the law enforcement officer to whom the warrant is issued, or who is primarily responsible for executing the warrant, believes that use of a surveillance device under the warrant is 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, he or she must inform the chief officer of the law enforcement agency immediately.

Subdivision 3—Retrieval warrants

20C Application for retrieval warrant

S. 20C
inserted by
No. 26/2004
s. 9.

- (1) A law enforcement officer (or another person on his or her behalf) may apply for the issue of a retrieval warrant in respect of a surveillance device that was lawfully installed on premises, or in or on an object, under a surveillance device warrant and which the law enforcement officer on reasonable grounds suspects or believes is still on those premises or in or on that object, or on other premises or in or on another object.
- (2) An application may be made only with the approval of—
 - (a) a senior officer of the law enforcement agency concerned; or
 - (b) an authorised police officer.
- (3) The application may be made to—
 - (a) a Supreme Court judge in any case; or
 - (b) a magistrate in the case of an application for a retrieval warrant authorising the retrieval of a tracking device only.
- (4) Subject to this section, an application must be supported by an affidavit setting out the grounds on which the warrant is sought.

S. 20C(5)
amended by
No. 6/2018
s. 68(Sch. 2
item 121.1).

- (5) If a law enforcement officer believes that—

- (a) the immediate retrieval of a surveillance device is necessary; and

(b) it is impracticable for an affidavit to be prepared or sworn or affirmed before an application for a warrant is made—

S. 20C(5)(b)
amended by
No. 6/2018
s. 68(Sch. 2
item 121.1).

an application for a warrant may be made before an affidavit is prepared or sworn or affirmed.

(6) If subsection (5) applies, the applicant must—

(a) provide as much information as the judge or magistrate considers is reasonably practicable in the circumstances; and

(b) not later than the day following the making of the application, send a duly sworn or affirmed affidavit to the judge or magistrate who determined the application, whether or not a warrant has been issued.

S. 20C(6)(b)
amended by
No. 6/2018
s. 68(Sch. 2
item 121.2).

(6A) The applicant must notify a Public Interest Monitor of the application in accordance with the regulations under the **Public Interest Monitor Act 2011**.

S. 20C(6A)
inserted by
No. 72/2011
s. 35.

(7) An application for a warrant is not to be heard in open court.

20D Remote application

S. 20D
inserted by
No. 26/2004
s. 9.

(1) If a law enforcement officer believes that it is impracticable for an application for a retrieval warrant to be made in person, the application may be made under section 20C by telephone, fax, e-mail or any other means of communication.

(2) If transmission by fax is available and an affidavit has been prepared, the person applying must transmit a copy of the affidavit, whether sworn or affirmed, or unsworn or not affirmed, to the judge or magistrate who is to determine the application.

S. 20D(2)
amended by
No. 6/2018
s. 68(Sch. 2
item 121.3).

S. 20E
inserted by
No. 26/2004
s. 9.

20E Determining the application

- (1) A Supreme Court judge or magistrate may issue a retrieval warrant if the judge or magistrate is satisfied—
 - (a) that there are reasonable grounds for the suspicion or belief founding the application for the warrant; and
 - (b) in the case of an unsworn application—that it would have been impracticable for an affidavit to have been prepared or sworn or affirmed before the application was made; and
 - (c) in the case of a remote application—that it would have been impracticable for the application to have been made in person.
- (2) In determining whether a retrieval warrant should be issued, the judge or magistrate must have regard to—
 - (a) the extent to which the privacy of any person is likely to be affected; and
 - (b) the public interest in retrieving the device sought to be retrieved; and
 - (c) any submissions made by a Public Interest Monitor.

S. 20E(1)(b)
amended by
No. 6/2018
s. 68(Sch. 2
item 121.4).

S. 20E(2)(b)
amended by
No. 72/2011
s. 36(1).

S. 20E(2)(c)
inserted by
No. 72/2011
s. 36(2).

S. 20F
inserted by
No. 26/2004
s. 9.

20F What must a retrieval warrant contain?

- (1) A retrieval warrant must—
 - (a) state that the judge or magistrate is satisfied of the matters referred to in section 20E(1) and has had regard to the matters referred to in section 20E(2); and

- (b) specify—
- (i) the name of the applicant; and
 - (ii) the date the warrant is issued; and
 - (iii) the kind of surveillance device authorised to be retrieved; and
 - (iv) the premises or object from which the surveillance device is to be retrieved; and
 - (v) the period (not exceeding 90 days) during which the warrant is in force; and
 - (vi) the name of the law enforcement officer primarily responsible for executing the warrant; and
 - (vii) any conditions subject to which premises may be entered under the warrant; and
 - (viii) the time within which a report in respect of the warrant must be made to the judge or magistrate under section 30K.

(2) A warrant must be signed by the person issuing it and include their name.

(3) If the judge or magistrate issues a warrant on a remote application—

- (a) the judge or magistrate must inform the applicant of—
 - (i) the terms of the warrant; and
 - (ii) the date on which and the time at which the warrant was issued—

and cause those details to be entered in a register kept by the judge or magistrate for the purpose; and

- (b) the judge or magistrate must provide the applicant with a copy of the warrant as soon as practicable.

S. 20G
inserted by
No. 26/2004
s. 9.

20G What a retrieval warrant authorises

- (1) A retrieval warrant (subject to any conditions specified in it) authorises—
 - (a) the retrieval of the surveillance device specified in the warrant and any enhancement equipment in relation to the device; and
 - (b) the entry, by force if necessary, onto the premises where the surveillance device is reasonably believed to be, or other premises adjoining or providing access to those premises, for the purpose of retrieving the device and equipment; and
 - (c) the breaking open of any thing for the purpose of the retrieval of the device and equipment; and
 - (d) if the device or equipment is installed on or in an object, the temporary removal of the object from any place where it is situated for the purpose of the retrieval of the device and equipment and the return of the object to that place; and
 - (e) the provision of assistance or technical expertise to the law enforcement officer primarily responsible for executing the warrant in the retrieval of the device or equipment.
- (2) If the retrieval warrant authorises the retrieval of a tracking device, the warrant also authorises the use of the tracking device and any enhancement equipment in relation to the device solely for the purposes of the location and retrieval of the device or equipment.

- (3) A retrieval warrant may authorise the doing of anything reasonably necessary to conceal the fact that anything has been done in relation to the retrieval of a surveillance device or enhancement equipment under the warrant.

20H Revocation of retrieval warrant

S. 20H
inserted by
No. 26/2004
s. 9.

- (1) A retrieval warrant may be revoked at any time before the expiration of the period of validity specified in it by—
- (a) a Supreme Court judge, if a Supreme Court judge issued the warrant; or
 - (b) a magistrate, if a magistrate issued the warrant.
- (2) A judge or magistrate who revokes a warrant must give notice of the revocation to the chief officer of the law enforcement agency of which the law enforcement officer to whom the warrant was issued is a member.
- (3) If the chief officer of a law enforcement agency is satisfied that the grounds for issue of a retrieval warrant to a law enforcement officer of the agency no longer exist, the chief officer must, by instrument in writing, revoke the warrant.
- (4) If the law enforcement officer to whom a retrieval warrant has been issued, or who is primarily responsible for executing a retrieval warrant, believes that the grounds for issue of the warrant no longer exist, he or she must inform the chief officer of the law enforcement agency immediately.
- (5) Notice of the revocation of a retrieval warrant must be given to a Public Interest Monitor in accordance with the regulations under the **Public Interest Monitor Act 2011**.

S. 20H(5)
inserted by
No. 72/2011
s. 37.

Division 2—Assistance orders

21 Application for assistance order

- (1) If a person who has applied or intends to apply for a warrant believes that it is necessary to obtain the assistance of another person for the effective execution of the warrant, he or she may apply to the Supreme Court for an order directing the other person to assist in the execution of the warrant.
- (2) An application for an assistance order—
 - (a) is to be made in the same manner as the application for the warrant; and
 - (b) may be made at the same time as the application for the warrant or subsequently.

S. 21(2A)
inserted by
No. 72/2011
s. 38(1).

- (2A) The applicant must notify a Public Interest Monitor of the application in accordance with the regulations under the **Public Interest Monitor Act 2011**.
- (3) Notice of an application for an assistance order is not required to be given to any person except a Public Interest Monitor.

S. 21(3)
amended by
No. 72/2011
s. 38(2).

22 Assistance order

- (1) On an application under section 21, the court may make an assistance order if satisfied that there are reasonable grounds for doing so.
- (2) In determining whether or not to make an assistance order the court must take into account—
 - (a) the cost or difficulty of complying with the order; and
 - (b) the nature and gravity of the alleged offence in respect of which the relevant warrant is or was sought; and

S. 22(2)(b)
amended by
No. 72/2011
s. 39(1).

(c) any submissions made by a Public Interest Monitor.

S. 22(2)(c)
inserted by
No. 72/2011
s. 39(2).

(3) The court may make an assistance order subject to any conditions it thinks fit.

(4) An assistance order—

(a) must be endorsed on the relevant warrant;
and

(b) must specify—

(i) the person against whom it is made;
and

(ii) the kind of assistance that the person
must give; and

(iii) the manner in which the assistance
must be given; and

(iv) any conditions subject to which it is
made.

(5) An assistance order has effect only during the period in which the relevant warrant is in force.

23 Failure to comply with assistance order

A person who is the subject of an assistance order must not knowingly contravene the order.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

Note

Section 32 applies to an offence against this section.

Note to s. 23
inserted by
No. 13/2013
s. 42(2).

24 Existence and operation of assistance order not to be disclosed

- (1) A person who is, or has been, the subject of an assistance order must not knowingly disclose the existence or operation of the order to any person except—
- (a) a person who is or was authorised to use a surveillance device under the relevant warrant; or
 - (b) another person for the purpose of ensuring that the order is complied with; or
 - (c) an Australian lawyer acting for the person, for the purpose of obtaining legal advice or representation in relation to the order.

S. 24(1)(c)
amended by
Nos 18/2005
s. 18(Sch. 1
item 104),
17/2014
s. 160(Sch. 2
item 94).

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

- (2) A person to whom the existence or operation of an assistance order is disclosed in accordance with subsection (1) must not knowingly disclose the existence or operation of the order to any person except—
- (a) in the case of a person referred to in subsection (1)(a)—in the performance of his or her duty; or
 - (b) in the case of a person referred to in subsection (1)(b)—for the purpose of ensuring that the order is complied with; or

(c) in the case of a person referred to in subsection (1)(c)—for the purpose of giving legal advice or providing representation in relation to the order.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

- (3) Nothing in subsection (2) prevents the disclosure by a person referred to in subsection (1)(a) or (b) of the existence or operation of an assistance order in the course of legal proceedings or disciplinary proceedings.
- (4) A person referred to in subsection (1)(a) or (b) must not be required to disclose to any court the existence or operation of an assistance order.
- (5) A reference in this section to disclosing the existence or operation of an assistance order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the assistance order.

Note

Section 32 applies to an offence against subsection (1) or (2).

**Note to s. 24
inserted by
No. 13/2013
s. 42(3).**

Pt 4 Div. 3
(Heading and
ss 25–30)
substituted as
Pt 4 Div. 3
(Heading and
ss 25–30A) by
No. 26/2004
s. 10 (as
amended by
No. 63/2004
s. 14).

Division 3—Emergency authorisations

S. 25
substituted by
Nos 26/2004
s. 10 (as
amended by
No. 63/2004
s. 14), 24/2014
s. 83.

25 Application of Division

This Division does not apply to—

(a) the following law enforcement agencies—

S. 25(a)(i)
substituted by
No. 27/2016
s. 41(1).

(i) the Department of Environment, Land,
Water and Planning;

S. 25(a)(ia)
inserted by
No. 27/2016
s. 41(1),
amended by
No. 68/2016
s. 172.

(ia) the Victorian Fisheries Authority;

(i) the Department of Environment and
Primary Industries;

(ii) the Game Management Authority; or

S. 25(b)
amended by
Nos 27/2016
s. 41(2),
68/2016 s. 172.

(b) law enforcement officers of the Department
of Environment, Land, Water and Planning,
the Victorian Fisheries Authority or the
Game Management Authority.

S. 26
substituted by
No. 26/2004
s. 10.

26 Emergency authorisation—risk of serious personal violence or substantial property damage

(1) A law enforcement officer of a law enforcement agency may apply to a senior officer of the agency for an emergency authorisation for the use of a surveillance device if the law enforcement officer on reasonable grounds suspects or believes that—

- (a) an imminent threat of serious violence to a person or substantial damage to property exists; and
 - (b) the use of a surveillance device is immediately necessary for the purpose of dealing with that threat; and
 - (c) the circumstances are so serious and the matter is of such urgency that the use of a surveillance device is warranted; and
 - (d) it is not practicable in the circumstances to apply for a surveillance device warrant.
- (2) An application may be made orally, in writing or by telephone, fax, e-mail or any other means of communication.
- (3) A senior officer may give an emergency authorisation for the use of a surveillance device on an application under subsection (1) if satisfied that there are reasonable grounds for the suspicion or belief founding the application.
- (4) An emergency authorisation given under this section may authorise the law enforcement officer to whom it is given to do anything that a surveillance device warrant may authorise them to do.

27 Emergency authorisation—serious drug offences

- (1) A law enforcement officer of a law enforcement agency may apply to a senior officer of the agency for an emergency authorisation for the use of a surveillance device if—
- (a) a serious drug offence or an offence against a law of another jurisdiction or the Commonwealth that corresponds to a serious drug offence has been, is being, is about to be or is likely to be committed; and

S. 27
substituted by
No. 26/2004
s. 10.

- (b) the use of a surveillance device is immediately necessary for the purpose of an investigation into that offence or of enabling evidence or information to be obtained of the commission of that offence or the identity or location of the offender; and
 - (c) the circumstances are so serious and the matter is of such urgency that the use of a surveillance device is warranted; and
 - (d) it is not practicable in the circumstances to apply for a surveillance device warrant.
- (2) An application may be made orally, in writing or by telephone, fax, e-mail or any other means of communication.
 - (3) A senior officer may give an emergency authorisation for the use of a surveillance device on an application under subsection (1) if satisfied that there are reasonable grounds for the suspicion or belief founding the application.
 - (4) Subject to subsection (5), an emergency authorisation given under this section may authorise the law enforcement officer to whom it is given to do anything that a surveillance device warrant may authorise them to do.
 - (5) An emergency authorisation given under this section cannot authorise the installation or use of a surveillance device outside this jurisdiction.

S. 28
substituted by
No. 26/2004
s. 10.

28 Application for approval after use of surveillance device under emergency authorisation

- (1) Within 2 business days after giving an emergency authorisation, a senior officer (or another person on his or her behalf) must apply to a Supreme Court judge for approval of the exercise of powers under the emergency authorisation.

- (2) An application—
- (a) must specify—
 - (i) the name of the applicant; and
 - (ii) the kind of surveillance device sought to be approved and, if a warrant is sought, the nature and duration of the warrant; and
 - (b) must be supported by an affidavit setting out the grounds on which the approval (and warrant, if any) is sought.

(2A) The applicant must give the Public Interest Monitor notice of the application in accordance with the regulations under the **Public Interest Monitor Act 2011**.

S. 28(2A)
inserted by
No. 72/2011
s. 40.

(3) The judge may refuse to consider the application until the applicant gives the judge all the information the judge requires about the application in the way the judge requires.

(4) An application is not to be heard in open court.

29 Consideration of application

- (1) Before deciding an application for approval in respect of an emergency authorisation given under section 26, the judge must, in particular, and being mindful of the intrusive nature of using a surveillance device, consider the following—
- (a) the nature of the risk of serious violence to a person or substantial damage to property; and
 - (b) the extent to which issuing a surveillance device warrant would have helped reduce or avoid the risk; and

S. 29
substituted by
No. 26/2004
s. 10.

Surveillance Devices Act 1999

No. 21 of 1999

Part 4—Authorisations for the use of surveillance devices

S. 29(1)(f)
amended by
No. 72/2011
s. 41(1).

S. 29(1)(g)
inserted by
No. 72/2011
s. 41(2).

S. 29(2)(c)
amended by
No. 72/2011
s. 41(3).

S. 29(2)(d)
inserted by
No. 72/2011
s. 41(4).

- (c) the extent to which law enforcement officers could have used alternative methods of investigation to help reduce or avoid the risk; and
 - (d) how much the use of alternative methods of investigation could have helped reduce or avoid the risk; and
 - (e) how much the use of alternative methods of investigation would have prejudiced the safety of the person or property because of delay or for another reason; and
 - (f) whether or not it was practicable in the circumstances to apply for a surveillance device warrant; and
 - (g) any submissions made by a Public Interest Monitor.
- (2) Before deciding an application for approval in respect of an emergency authorisation given under section 27, the judge must, in particular, and being mindful of the intrusive nature of using a surveillance device, consider the following—
- (a) the nature of the serious and urgent circumstances in respect of which the emergency authorisation was sought; and
 - (b) the extent to which law enforcement officers could have used alternative methods of investigation; and
 - (c) whether or not it was practicable in the circumstances to apply for a surveillance device warrant; and
 - (d) any submissions made by a Public Interest Monitor.

30 Judge may approve emergency use of powers

S. 30
substituted by
No. 26/2004
s. 10.

- (1) After considering an application for approval in respect of an emergency authorisation given under section 26, the judge may approve the application if satisfied that there were reasonable grounds to suspect or believe that—
 - (a) there was a risk of serious violence to a person or substantial damage to property; and
 - (b) using a surveillance device may have helped reduce the risk; and
 - (c) it was not practicable in the circumstances to apply for a surveillance device warrant.
- (2) After considering an application for approval in respect of an emergency authorisation given under section 27, the judge may approve the application if satisfied that—
 - (a) the circumstances of the case were serious and urgent; and
 - (b) using a surveillance device may have helped to obtain evidence or information of the commission of the offence or the identity or location of the offender; and
 - (c) it was not practicable in the circumstances to apply for a surveillance device warrant.
- (3) If the judge approves an application under this section, the judge may issue a surveillance device warrant for the continued use of the surveillance device as if the application were an application for a surveillance device warrant under Subdivision 2 of Division 1.

- (4) If the judge does not approve an application under this section, the judge may—
 - (a) order that the use of the surveillance device cease; and
 - (b) authorise, subject to any conditions the judge thinks fit, the retrieval of the surveillance device.
- (5) In any case, the judge may order that any information obtained from or relating to the exercise of powers under the emergency authorisation or any record of that information be dealt with in the way specified in the order.

S. 30A
inserted by
No. 26/2004
s. 10.

30A Admissibility of evidence

If the exercise of powers under an emergency authorisation is approved under section 30, evidence obtained because of the exercise of those powers is not inadmissible in any proceeding only because the evidence was obtained before the approval.

Part 4A—Recognition of corresponding warrants and authorisations

Pt 4A
(Heading and
ss 30B, 30C)
inserted by
No. 26/2004
s. 11.

30B Corresponding warrants

S. 30B
inserted by
No. 26/2004
s. 11.

A corresponding warrant may be executed in this jurisdiction in accordance with its terms as if it were a surveillance device warrant or retrieval warrant (as the case requires) issued under Division 1 of Part 4.

30C Corresponding emergency authorisations

S. 30C
inserted by
No. 26/2004
s. 11.

- (1) A corresponding emergency authorisation authorises the use of a surveillance device in accordance with its terms in this jurisdiction, as if it were an emergency authorisation given under Division 3 of Part 4.
- (2) Subsection (1) does not apply at any time after a judge orders, under a provision of a corresponding law that corresponds to section 30(4), that the use of a surveillance device under the corresponding emergency authorisation cease.

Pt 5 (Heading)
substituted by
No. 26/2004
s. 12.

Part 5—Compliance and monitoring

Pt 5 Div. 1
(Heading and
ss 30D–30J)
inserted by
No. 26/2004
s. 13 (as
amended by
No. 27/2006
s. 21(2)(a)).

Division 1—Restrictions on use, communication and publication of information

S. 30D
inserted by
No. 26/2004
s. 13.

30D What is protected information?

In this Division—

S. 30D def. of
*protected
information*
amended by
No. 54/2017
s. 6.

protected information means—

- (a) any information obtained from the use of a surveillance device under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or
- (ab) any information obtained from the use of a body-worn camera or a tablet computer by a police officer or an ambulance officer acting in the course of the officer's duty; or
- (ac) any information obtained from the use of a body-worn camera or a tablet computer by a prescribed person, or a person belonging to a prescribed class of persons, acting in the course of the person's duties in the prescribed circumstances; or

- (b) any information relating to—
- (i) an application for, issue of, existence of or expiry of a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or
 - (ii) an application for approval of powers exercised under an emergency authorisation; or
 - (iii) an application under a corresponding law for approval of powers exercised under a corresponding emergency authorisation.

30E Prohibition on use, communication or publication of protected information

S. 30E
inserted by
No. 26/2004
s. 13.

- (1) A person is guilty of an offence if—
- (a) the person intentionally, knowingly or recklessly uses, communicates or publishes any information; and
 - (b) the person knows that, or is reckless as to whether, the information is protected information; and
 - (c) the person knows that, or is reckless as to whether, the use, communication or publication of the information is not permitted by this Division.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate,
1200 penalty units.

- (2) A person is guilty of an offence against this subsection if the person commits an offence against subsection (1) in circumstances in which the person—
- (a) intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation into an offence; or
 - (b) knows that, or is reckless as to whether, the disclosure of the information—
 - (i) endangers or will endanger the health or safety of any person; or
 - (ii) prejudices or will prejudice the effective conduct of an investigation into an offence.
- Penalty: In the case of a natural person, level 5 imprisonment (10 years maximum) or a level 5 fine (1200 penalty units maximum) or both;
- In the case of a body corporate, 6000 penalty units.
- (3) An offence against subsection (2) is an indictable offence.
- (4) Subsections (1) and (2) do not apply to—
- (a) the use, communication or publication of—
 - (i) any information that has been disclosed in proceedings in open court; or
 - (ii) any information that has entered the public domain; or
 - (b) the use or communication of protected information by a person who believes on reasonable grounds that the use or communication is necessary to help prevent or reduce the risk of serious violence to a person or substantial damage to property; or

- (c) the communication to the Director-General (within the meaning of the Australian Security Intelligence Organisation Act 1979 of the Commonwealth) of protected information that relates or appears to relate to activities prejudicial to security (within the meaning of that Act); or
 - (d) the use or communication of information referred to in paragraph (c) by an officer of the Australian Security Intelligence Organisation in the performance of his or her official functions; or
 - (e) the use or communication of information to a foreign country or an appropriate authority of a foreign country in accordance with the Mutual Assistance in Criminal Matters Act 1987 of the Commonwealth.
- (5) Subsection (4)(c) and (d) do not authorise the use, communication or publication of protected information in respect of an emergency authorisation or corresponding emergency authorisation unless the use of powers under that authorisation has been approved under section 30 or the provisions of a corresponding law that correspond to section 30.

Note

Section 32A applies to an offence against subsection (1) or (2).

Note to s. 30E
inserted by
No. 13/2013
s. 42(4).

30F Permitted use of local protected information

- (1) Local protected information may be used, communicated or published if it is necessary to do so for any of the following purposes—
- (a) the investigation of an offence;

S. 30F
inserted by
No. 26/2004
s. 13 (as
amended by
No. 27/2006
s. 21(2)(a)).

- (b) the making of a decision whether or not to bring a relevant proceeding in respect of an offence;
- (c) a relevant proceeding in respect of an offence;
- (d) an investigation of a complaint against, or the conduct of, a public officer within the meaning of this Act or a public officer within the meaning of a corresponding law;
- (e) the making of a decision in relation to the appointment, re-appointment, term of appointment, termination or retirement of a person referred to in paragraph (d);
- (f) the keeping of records and the making of reports by a law enforcement agency in accordance with the obligations imposed by Division 2;
- (g) an inspection by the Victorian Inspectorate under section 30P;

S. 30F(1)(g)
amended by
No. 82/2012
s. 139.

- (ga) an inspection by the Commonwealth Ombudsman under a provision of a corresponding law that corresponds to section 30P;

S. 30F(1)(h)
amended by
No. 60/2014
s. 140(Sch. 3
item 45.1).

- (h) an investigation under the **Privacy and Data Protection Act 2014** or the law of a participating jurisdiction or of the Commonwealth concerning the privacy of personal information.

S. 30F(1A)
inserted by
No. 54/2017
s. 7(1).

- (1A) Without limiting subsection (1), local protected information obtained from the use of a body-worn camera or a tablet computer by a police officer or an ambulance officer acting in the course of the officer's duty may be used, communicated or published for—

- (a) the education and training of police officers or ambulance officers, as the case requires; or
 - (b) any prescribed purpose.
- (1B) Without limiting subsection (1), local protected information obtained from the use of a body-worn camera or a tablet computer by a prescribed person, or a person belonging to a prescribed class of persons, acting in the course of the person's duties in the prescribed circumstances may be used, communicated or published for—
- (a) the education and training of prescribed persons or persons belonging to the same class of prescribed persons; or
 - (b) any prescribed purpose.
- (2) Subsection (1)(a), (b) and (c) do not authorise the use, communication or publication of protected information in respect of an emergency authorisation unless the use of powers under that authorisation has been approved under section 30.
- (3) A reference in subsection (1) to an offence (whether of this jurisdiction or any other jurisdiction) is a reference to any offence, whether or not the offence in respect of which the relevant warrant or emergency authorisation was issued or given.
- (4) In this section—

S. 30F(1B)
inserted by
No. 54/2017
s. 7(1).

local protected information means—

- (a) any information obtained from the use of a surveillance device under a warrant or emergency authorisation; or

S. 30F(4)
def. of *local protected information*
amended by
No. 54/2017
s. 7(2).

- (b) any information relating to—
 - (i) an application for, issue of, existence of or expiry of a warrant or emergency authorisation; or
 - (ii) an application for approval of powers exercised under an emergency authorisation; or
- (c) any information obtained from the use of a body-worn camera or a tablet computer by a police officer or an ambulance officer acting in the course of the officer's duty; or
- (d) any information obtained from the use of a body-worn camera or a tablet computer by a prescribed person, or a person belonging to a prescribed class of persons, acting in the course of the person's duties in the prescribed circumstances.

S. 30G
inserted by
No. 26/2004
s. 13.

30G Permitted use of corresponding protected information

- (1) Corresponding protected information may be used, communicated or published if it is necessary to do so for any of the following purposes—
 - (a) the investigation of a relevant offence within the meaning of this Act or a relevant offence within the meaning of a corresponding law;
 - (b) the making of a decision whether or not to bring—
 - (i) a relevant proceeding in respect of a relevant offence; or
 - (ii) a relevant proceeding within the meaning of a corresponding law in respect of a relevant offence within the meaning of that law;

- (c) a relevant proceeding in respect of a relevant offence, or a relevant proceeding within the meaning of a corresponding law in respect of a relevant offence within the meaning of that law;
 - (d) an investigation of a complaint against, or the conduct of, a public officer within the meaning of this Act or a public officer within the meaning of a corresponding law;
 - (e) the making of a decision in relation to the appointment, re-appointment, term of appointment, termination or retirement of a person referred to in paragraph (d);
 - (f) the keeping of records and the making of reports by a law enforcement agency (within the meaning of a corresponding law) in accordance with the obligations imposed by provisions of the corresponding law that correspond to Division 2;
 - (g) an inspection under a provision of a corresponding law that corresponds to section 30P;
 - (h) an investigation under the **Privacy and Data Protection Act 2014** or the law of a participating jurisdiction or of the Commonwealth concerning the privacy of personal information.
- (2) Subsection (1)(a), (b) and (c) do not authorise the use, communication or publication of protected information in respect of a corresponding emergency authorisation unless the use of powers under that authorisation has been approved under the provisions of a corresponding law that correspond to section 30.

S. 30G(1)(h)
amended by
No. 60/2014
s. 140(Sch. 3
item 45.2).

(3) A reference in subsection (1) to a relevant offence (whether of this jurisdiction or any other jurisdiction) is a reference to a relevant offence, whether or not the offence in respect of which the relevant corresponding warrant or emergency authorisation was issued or given.

(4) In this section—

corresponding protected information means—

(a) any information obtained from the use of a surveillance device under a corresponding warrant or corresponding emergency authorisation; or

(b) any information relating to—

(i) an application for, issue of, existence of or expiry of a corresponding warrant or corresponding emergency authorisation; or

(ii) an application under a corresponding law for approval of powers exercised under a corresponding emergency authorisation.

S. 30H
inserted by
No. 26/2004
s. 13.

30H Dealing with records obtained by use of surveillance devices

(1) The chief officer of a law enforcement agency—

(a) must ensure that every record or report obtained by use of a surveillance device by a law enforcement officer of the agency under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation is kept in a secure place that is not accessible to people who are

not entitled to deal with the record or report;
and

(b) must destroy or cause to be destroyed any record or report referred to in paragraph (a) if satisfied that it is not likely to be required in connection with a purpose referred to in section 30E(4), 30F(1) or 30G(1).

(2) Subsection (1) does not apply to a record or report that is received into evidence in legal proceedings or disciplinary proceedings.

30I Protection of surveillance device technologies and methods

S. 30I
inserted by
No. 26/2004
s. 13.

- (1) In any proceeding, a person may object to the disclosure of information on the ground that the information, if disclosed, could reasonably be expected to reveal details of surveillance device technology or methods of installation, use or retrieval of surveillance devices.
- (2) If the person conducting or presiding over the proceeding is satisfied that the ground of objection is made out, he or she may order that the person who has the information not be required to disclose it in the proceeding.
- (3) In determining whether or not to make an order under subsection (2), the person conducting or presiding over the proceeding must take into account whether disclosure of the information—
- (a) is necessary for the fair trial of the accused;
or
 - (b) is in the public interest.
- (4) Subsection (2) does not affect a provision of another law under which a law enforcement officer cannot be compelled to disclose

S. 30I(3)(a)
amended by
No. 68/2009
s. 97(Sch.
item 117.1).

information or make statements in relation to the information.

- (5) If the person conducting or presiding over a proceeding is satisfied that publication of any information disclosed in the proceeding could reasonably be expected to reveal details of surveillance device technology or methods of installation, use or retrieval of surveillance devices, the person must make any orders prohibiting or restricting publication of the information that he or she considers necessary to ensure that those details are not revealed.
- (6) Subsection (5) does not apply to the extent that the person conducting or presiding over the proceeding considers that the interests of justice require otherwise.
- (7) In this section—

S. 30(7)
def. of
proceeding
amended by
No. 69/2009
s. 54(Sch. Pt 2
item 49),
substituted by
No. 67/2014
s. 147(Sch. 2
item 34).

proceeding includes—

- (a) a proceeding before a court or tribunal;
and
- (b) a proceeding of a Royal Commission,
whether established under the **Inquiries
Act 2014** or under the prerogative of
the Crown; and
- (c) a proceeding of a Board of Inquiry or
Formal Review established under the
Inquiries Act 2014; and
- (d) a proceeding before a person or body to
which Division 5 of Part I of the
**Evidence (Miscellaneous Provisions)
Act 1958**, as in force immediately
before the repeal of that Division,
applies.

30J Protected information in the custody of a court

A person is not entitled to search any protected information in the custody of a court unless the court otherwise orders in the interests of justice.

S. 30J
inserted by
No. 26/2004
s. 13.

Division 2—Reporting and record-keeping

Pt 5 Div. 2
(Heading and
ss 30K–30O)
inserted by
No. 26/2004
s. 13.

30K Report to judge or magistrate

- (1) A law enforcement officer to whom a warrant is issued, or who is primarily responsible for executing a warrant issued, under this Act must, within the time specified in the warrant, make a report in accordance with this section to the judge or magistrate who issued the warrant.
- (2) In the case of a surveillance device warrant, the report must—
 - (a) state whether the warrant was executed; and
 - (b) if so—
 - (i) state the name of each person involved in the execution of the warrant; and
 - (ii) state the kind of surveillance device used; and
 - (iii) state the period during which the device was used; and
 - (iv) state the name, if known, of any person whose conversations or activities were overheard, recorded, monitored, listened to or observed by the use of the device; and

S. 30K
inserted by
No. 26/2004
s. 13.

- (v) state the name, if known, of any person whose geographical location was determined by the use of a tracking device; and
 - (vi) give details of any premises on which the device was installed or any place at which the device was used; and
 - (vii) give details of any object in or on which the device was installed or any premises where the object was located when the device was installed; and
 - (viii) give details of the benefit to the investigation of the use of the device and of the general use made or to be made of any evidence or information obtained by the use of the device; and
 - (ix) give details of the compliance with the conditions (if any) to which the warrant was subject; and
- (c) if the warrant was extended or varied, state—
- (i) the number of extensions or variations; and
 - (ii) the reasons for them; and
- (d) state whether the chief officer has revoked the warrant under section 20A(2) and, if so state—
- (i) whether a Public Interest Monitor was notified of the revocation; and
 - (ii) the reasons why the device was no longer required.

S. 30K(2)(d)
substituted by
No. 72/2011
s. 42(1).

- (3) In the case of a retrieval warrant, the report must—
- (a) give details of any premises entered, anything opened and any object removed and replaced under the warrant; and
 - (b) state whether the surveillance device was retrieved under the warrant; and
 - (c) if the device was not retrieved, state the reason why; and
 - (d) give details of the compliance with the conditions (if any) to which the warrant was subject; and
 - (e) state whether the chief officer has revoked the warrant under section 20H(3) and, if so state—
 - (i) whether a Public Interest Monitor was notified of the revocation; and
 - (ii) the reasons for the revocation.
- (4) On receiving a report, the judge or magistrate may order that any information obtained from or relating to the execution of the warrant or any record of that information be dealt with in the way specified in the order.
- (5) The judge or magistrate who receives a report may ask a Public Interest Monitor to make submissions as to how the information or record referred to in subsection (4) should be dealt with.
- (6) On receiving the request, the Public Interest Monitor is entitled to make submissions to the judge or magistrate in the presence of the judge or magistrate or by phone, fax, email or any other reasonable way.

S. 30K(3)(e)
substituted by
No. 72/2011
s. 42(2).

S. 30K(5)
inserted by
No. 72/2011
s. 42(3).

S. 30K(6)
inserted by
No. 72/2011
s. 42(3).

S. 30L
inserted by
No. 26/2004
s. 13.

30L Annual reports

- (1) The chief officer of a law enforcement agency must submit a report to the Minister that includes the following information in respect of each financial year—
 - (a) the number of applications for warrants by and the number of warrants issued to law enforcement officers of the agency during that year; and
 - (b) the number of applications for emergency authorisations by and the number of emergency authorisations given to law enforcement officers of the agency during that year; and
 - (c) the number of remote applications for warrants by law enforcement officers of the agency during that year; and
 - (d) the number of applications for warrants or emergency authorisations by law enforcement officers of the agency that were refused during that year, and the reasons for refusal; and
 - (e) the number of applications for extensions of warrants by law enforcement officers of the agency during that year, the number of extensions granted or refused and the reasons why they were granted or refused; and
 - (f) the number of arrests made by law enforcement officers of the agency during that year on the basis (wholly or partly) of information obtained by the use of a surveillance device under a warrant or emergency authorisation; and
 - (g) the number of prosecutions that were commenced in this jurisdiction during that year in which information obtained by the

use of a surveillance device under a warrant or emergency authorisation was given in evidence and the number of those prosecutions in which a person was found guilty; and

- (h) in the case of Victoria Police—
- (i) the name and rank of each person appointed as a senior officer under section 3(3) (whether appointed during that year or previously); and
 - (ii) if any person referred to in subparagraph (i) is below the rank of commander, the reason for the appointment of the person under section 3(3); and
- (i) any other information relating to the use of surveillance devices and the administration of this Act that the Minister considers appropriate.
- (2) The information referred to in subsection (1)(a) and (b) must be presented in such a way as to identify the number of warrants issued and emergency authorisations given in respect of each different kind of surveillance device.
- (3) The report must be submitted to the Minister as soon as practicable after the end of each financial year, and at any event within 3 months after the end of the financial year.
- (4) The chief officer must advise the Minister of any information in the report that, in the chief officer's opinion, should be excluded from the report before the report is laid before Parliament because the information, if made public, could reasonably be expected to—
- (a) endanger a person's safety; or

**S. 30L(4)
substituted by
No. 27/2016
s. 42.**

- (b) prejudice an investigation or prosecution; or
- (c) compromise any law enforcement agency's operational activities or methodologies.

S. 30L(5)
inserted by
No. 27/2016
s. 42.

- (5) The Minister must—
 - (a) exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (4); and
 - (b) cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the day on which the Minister receives the report.

S. 30M
inserted by
No. 26/2004
s. 13.

30M Keeping documents connected with warrants and emergency authorisations

The chief officer of a law enforcement agency must cause the following to be kept—

- (a) each warrant issued to a law enforcement officer of the agency; and
- (b) each notice given to the chief officer under section 20A(3) of revocation of a warrant; and
- (c) each emergency authorisation given to a law enforcement officer of the agency; and
- (d) each application made by a law enforcement officer of the agency for an emergency authorisation; and
- (e) a copy of each application made by a law enforcement officer of the agency for—
 - (i) a warrant;
 - (ii) extension, variation or revocation of a warrant;
 - (iii) approval of the exercise of powers under an emergency authorisation; and

- (f) a copy of each report made to a judge or magistrate under section 30K; and
- (g) a copy of each certificate issued by a senior officer of the agency under section 36.

30N Other records to be kept

The chief officer of a law enforcement agency must cause the following to be kept—

- (a) a statement as to whether each application made by a law enforcement officer of the agency for a warrant, or extension, variation or revocation of a warrant, was granted, refused or withdrawn; and
- (b) a statement as to whether each application made by a law enforcement officer of the agency for an emergency authorisation, or for approval of powers exercised under an emergency authorisation, was granted, refused or withdrawn; and
- (c) details of each use by the agency, or by a law enforcement officer of the agency, of information obtained by the use of a surveillance device by a law enforcement officer of the agency; and
- (d) details of each communication by a law enforcement officer of the agency to a person other than a law enforcement officer of the agency of information obtained by the use of a surveillance device by a law enforcement officer of the agency; and
- (e) details of each occasion when, to the knowledge of a law enforcement officer of the agency, information obtained by the use of a surveillance device by a law enforcement officer of the agency was given in evidence in a relevant proceeding; and

S. 30N
inserted by
No. 26/2004
s. 13.

- (f) details of the destruction of records or reports under section 30H(1)(b).

S. 30O
inserted by
No. 26/2004
s. 13.

30O Register of warrants and emergency authorisations

- (1) The chief officer of a law enforcement agency must cause a register of warrants and emergency authorisations to be kept.
- (2) The register is to specify, for each warrant issued to a law enforcement officer of the agency—
 - (a) the date of issue of the warrant; and
 - (b) the name of the judge or magistrate who issued the warrant; and
 - (c) the name of the law enforcement officer named in the warrant as the person primarily responsible for executing it; and
 - (d) the offence in relation to which the warrant was issued; and
 - (e) the period during which the warrant is in force; and
 - (f) details of any variation or extension of the warrant.
- (3) The register is to specify, for each emergency authorisation given to a law enforcement officer of the agency—
 - (a) the date the emergency authorisation was given; and
 - (b) the name of the senior officer who gave the emergency authorisation; and
 - (c) the name of the law enforcement officer to whom the emergency authorisation was given; and
 - (d) the offence in relation to which the emergency authorisation was given; and

- (e) the date on which the application for approval of powers exercised under the emergency authorisation was made.

Division 3—Inspections

Pt 5 Div. 3
(Heading and
ss 30P–30R)
inserted by
No. 26/2004
s. 13 (as
amended by
No. 27/2006
ss 21(2)
(b)–(h), 22).

30P Inspection of records by Victorian Inspectorate

S. 30P
(Heading)
amended by
No. 82/2012
s. 140(1).

S. 30P
inserted by
No. 26/2004
s. 13 (as
amended by
No. 27/2006
s. 21(2)
(b)–(e)).

- (1) The Victorian Inspectorate must, from time to time, inspect the records of a law enforcement agency to determine the extent of compliance with this Act by the agency and law enforcement officers of the agency.
- (2) For the purpose of an inspection under this section, the Victorian Inspectorate—
- (a) after notifying the chief officer of the agency, may enter at any reasonable time premises occupied by the agency; and
- (b) is entitled to have full and free access at all reasonable times to all records of the agency that are relevant to the inspection; and
- (c) may require a member of staff of the agency to give the Victorian Inspectorate any information that the Victorian Inspectorate

S. 30P(1)
amended by
No. 82/2012
s. 140(2).

S. 30P(2)
amended by
No. 82/2012
s. 140(2).

S. 30P(2)(c)
amended by
No. 82/2012
s. 140(2).

considers necessary, being information that is in the member's possession, or to which the member has access, and that is relevant to the inspection.

S. 30P(3)
amended by
No. 82/2012
s. 140(2).

- (3) The chief officer must ensure that members of staff of the agency give the Victorian Inspectorate any assistance the Victorian Inspectorate reasonably requires to enable the Victorian Inspectorate to perform functions under this section.

Note

See section 55 of the Surveillance Devices Act 2004 of the Commonwealth for inspection of records of the Australian Crime Commission.

S. 30Q
(Heading)
amended by
No. 82/2012
s. 140(3).

30Q Reports on investigations by Victorian Inspectorate

S. 30Q
inserted by
No. 26/2004
s. 13 (as
amended by
No. 27/2006
s. 21(2)(f)–(h)).

S. 30Q(1)
amended by
No. 82/2012
s. 140(4).

- (1) The Victorian Inspectorate must make a report to Parliament at 6-monthly intervals on the results of each inspection under section 30P.

S. 30Q(2)
amended by
No. 82/2012
s. 140(4).

- (2) The Victorian Inspectorate must—
- (a) cause the report to be transmitted to each House of Parliament as soon as practicable after 1 January and 1 July each year; and
 - (b) give a copy of the report to the Minister at the same time as it is transmitted to each House.

- (3) The clerk of each House of Parliament must cause the report to be laid before the House on the day on which it is received or on the next sitting day.

Note

See section 61 of the Surveillance Devices Act 2004 of the Commonwealth for reports on inspections of records of the Australian Crime Commission.

30R Commonwealth Ombudsman's reports on investigations

S. 30R
inserted by
No. 26/2004
s. 13 (as
amended by
No. 27/2006
s. 22).

- (1) The Minister must cause a copy of a report by the Commonwealth Ombudsman that is sent to the Minister under section 61(3) of the Surveillance Devices Act 2004 of the Commonwealth to be laid before each House of the Parliament within 14 sitting days of that House after it is received by the Minister.
- (2) If a report referred to in subsection (1) is sent to the Minister before the commencement of the **Justice Legislation (Further Miscellaneous Amendments) Act 2006**, the Minister must cause a copy of the report to be laid before each House of the Parliament within 14 sitting days of that House after the commencement of that Act.

Division 4—Further offences and enforcement

Pt 5 Div. 4
(Heading)
inserted by
No. 26/2004
s. 14.

31 Unlawful interference with surveillance devices

S. 31
amended by
No. 26/2004
s. 15(b).

Unless authorised by or under this Act, a person must not knowingly interfere with, damage, remove or retrieve a surveillance device that has been lawfully installed on premises or in or on an object by a law enforcement officer—

- (a) in the circumstances referred to in section 7(2)(c); or

S. 31(b)
substituted by
No. 26/2004
s. 15(a).

(b) in accordance with a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate, 1200 penalty units.

Note to s. 31
inserted by
No. 13/2013
s. 42(2).

Note

Section 32 applies to an offence against this section.

S. 32
amended by
No. 68/2009
s. 97(Sch.
item 117.2),
substituted by
No. 13/2013
s. 41.

**32 Criminal liability of officers of bodies corporate—
accessorial liability**

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer—
 - (a) authorised or permitted the commission of the offence by the body corporate; or
 - (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the body corporate.
- (2) For the purposes of subsection (1), the following provisions are specified—
 - (a) section 23;
 - (b) section 24(1) and (2);
 - (c) section 31.
- (3) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence

with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.

- (4) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

- (5) In this section—

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

officer in relation to a body corporate means—

- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.
- (6) This section does not affect the operation of Subdivision (1) of Division 1 of Part II of the **Crimes Act 1958**.

S. 32(6)
substituted by
No. 20/2015
s. 56(Sch. 1
item 11).

**32A Criminal liability of officers of bodies corporate—
failure to exercise due diligence**

S. 32A
inserted by
No. 13/2013
s. 41.

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.

- (2) For the purposes of subsection (1), the following provisions are specified—
- (a) section 6(1);
 - (b) section 7(1);
 - (c) section 8(1);
 - (d) section 9B(1);
 - (e) section 9C(1);
 - (f) section 11(1);
 - (g) section 30E(1) and (2).
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.

(5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

(6) In this section—

body corporate has the same meaning as in section 32;

officer in relation to a body corporate, has the same meaning as in section 32.

33 Search warrant

(1) A police officer may apply to a magistrate for the issue of a search warrant in relation to particular premises or a particular vehicle located in a public place if the police officer suspects on reasonable grounds that there is, or may be within the next 72 hours, on the premises or on or in the vehicle a particular thing that may be evidence of an offence against this Act.

S. 33(1)
amended by
Nos 26/2004
s. 15(c),
25/2009
s. 35(1),
37/2014
s. 10(Sch.
item 163.3).

(2) If a magistrate is satisfied by evidence on oath or by affirmation or by affidavit that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, on the premises or on or in the vehicle located in a public place a particular thing that may be evidence of an offence against this Act, the magistrate may issue a search warrant authorising a police officer named in the warrant and any assistants the police officer considers necessary—

S. 33(2)
amended by
Nos 26/2004
s. 15(c),
25/2009
s. 35(2)(a),
37/2014
s. 10(Sch.
item 163.3),
6/2018
s. 68(Sch. 2
item 121.5).

(a) to enter, by force if necessary, the premises or vehicle or part of the premises or vehicle named or described in the warrant; and

S. 33(2)(a)
amended by
No. 25/2009
s. 35(2)(b).

(b) to search the premises or vehicle or any person found on the premises or on or in the vehicle for any thing named or described in the warrant; and

S. 33(2)(b)
substituted by
No. 25/2009
s. 35(2)(c).

S. 33(3)(b)
amended by
No. 25/2009
s. 35(3).

- (c) to seize any thing referred to in paragraph (b).
- (3) In addition to any other requirement, a search warrant issued under this section must state—
 - (a) the offence suspected; and
 - (b) the premises or vehicle to be searched; and
 - (c) a description of the thing to be searched for; and
 - (d) any conditions to which the warrant is subject; and
 - (e) whether entry is authorised to be made at any time or during stated hours; and
 - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (5) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

34 Announcement before entry

S. 34(1)
amended by
No. 26/2004
s. 15(c),
substituted by
No. 25/2009
s. 36(1),
amended by
No. 37/2014
s. 10(Sch.
item 163.4).

- (1) Before executing a search warrant, the police officer named in the warrant or a person assisting him or her must—
 - (a) announce that he or she is authorised by the warrant to enter—

- (i) in the case of a warrant issued in respect of particular premises, the premises; or
 - (ii) in the case of a warrant issued in respect of a particular vehicle located in a public place, the vehicle; and
- (b) give any person at the premises or on or in the vehicle, as the case may be, an opportunity to allow entry to the premises or the vehicle.
- (2) The police officer or person assisting him or her need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises or vehicle is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

S. 34(2)
amended by
Nos 26/2004
s. 15(c),
25/2009
s. 36(2),
37/2014
s. 10(Sch.
item 163.4).

35 Copy of warrant to be given to occupier or person searched

- (1) If the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the police officer must—
- (a) identify himself or herself to that person; and
 - (b) give that person a copy of the execution copy of the warrant.
- (2) If a person found on premises when a search warrant is being executed is to be searched under the warrant, the police officer must—
- (a) identify himself or herself to that person; and
 - (b) give that person a copy of the execution copy of the warrant.

S. 35(1)
amended by
Nos 26/2004
s. 15(c),
37/2014
s. 10(Sch.
item 163.4).

S. 35(2)
amended by
Nos 26/2004
s. 15(c),
37/2014
s. 10(Sch.
item 163.4).

S. 35A
inserted by
No. 25/2009
s. 37.

35A Copy of warrant to be given to person in charge of vehicle or person searched

S. 35A(1)
amended by
No. 37/2014
s. 10(Sch.
item 163.4).

- (1) If there is a person in charge of the vehicle located in a public place when a search warrant is being executed, the police officer must—
- (a) identify himself or herself to that person; and
 - (b) give that person a copy of the execution copy of the warrant.

S. 35A(2)
amended by
No. 37/2014
s. 10(Sch.
item 163.4).

- (2) If a person found on or in the vehicle when a search warrant is being executed is to be searched under the warrant, the police officer must—
- (a) identify himself or herself to that person; and
 - (b) give that person a copy of the execution copy of the warrant.

Part 6—Miscellaneous

36 Evidentiary certificates

- (1) A senior officer of a law enforcement agency, or a person assisting him or her, may issue a written certificate signed by the officer or person setting out any facts he or she considers relevant with respect to—
- (a) anything done by a law enforcement officer of the agency, or by a person assisting or providing technical expertise to him or her, in connection with the execution of a warrant or in accordance with an emergency authorisation; or
 - (b) anything done by a law enforcement officer of the agency in connection with—
 - (i) the communication by a person to another person; or
 - (ii) the making use of; or
 - (iii) the making of a record of; or
 - (iv) the custody of a record of—
information obtained by the use of a surveillance device under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation.
- (2) A document purporting to be a certificate issued under subsection (1) or under a provision of a corresponding law that corresponds to subsection (1) is admissible in evidence in any proceeding.
- (3) Subsection (2) does not apply to a certificate to the extent that the certificate sets out facts with respect to anything done in accordance with an emergency authorisation or corresponding emergency authorisation unless the use of powers

S. 36
amended by
No. 63/2004
s. 9(2),
substituted by
No. 26/2004
s. 16 (as
amended by
No. 63/2004
s. 16).

under that authorisation has been approved under section 30 or under a provision of a corresponding law that corresponds to section 30.

S. 37
amended by
Nos 18/2002
s. 24(2),
52/2003
s. 52(Sch. 1
item 11(3)(4)),
56/2003 s. 9,
63/2004 s. 10,
repealed by
No. 26/2004
s. 16 (as
amended by
No. 63/2004
s. 16).

* * * * *

S. 37A
inserted by
No. 63/2004
s. 11.

37A Regulations

- (1) The Governor in Council may make regulations for or with respect to prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
 - (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstances.

Part 7—Repeals, transitional provisions and consequential amendments

* * * * *

Ss 38–40
repealed by
No. 26/2004
s. 17.

41 Transitional provision—annual reports

S. 41
inserted by
No. 56/2003
s. 10.

Despite section 37(1) as amended by the **Fisheries (Amendment) Act 2003**, the first annual report submitted under section 37(1)(c) after the commencement of that Act must include information relating to warrants that were applied for or issued for the purposes of the **Fisheries Act 1995** during the calendar year to which the report relates.

42 Transitional provisions—Surveillance Devices (Amendment) Act 2004

S. 42
inserted by
No. 26/2004
s. 18.

- (1) An existing surveillance device warrant that was in force immediately before the commencement day continues in force on and after that day in accordance with its terms as if it were a surveillance device warrant issued under section 17 as in force on and after the commencement day.
- (2) An existing retrieval warrant that was in force immediately before the commencement day continues in force on and after that day in accordance with its terms as if it were a retrieval warrant issued under section 20E as in force on and after the commencement day.
- (3) An existing emergency authorisation (violence or damage) that was in force immediately before the commencement day continues in force on and after that day in accordance with its terms as if it were an emergency authorisation given under

section 26 as in force on and after the commencement day.

- (4) An existing emergency authorisation (drugs) that was in force immediately before the commencement day continues in force on and after that day in accordance with its terms as if it were an emergency authorisation given under section 27 as in force on and after the commencement day.
- (5) Sections 28 to 30A (as substituted by the **Surveillance Devices (Amendment) Act 2004**) apply to an existing emergency authorisation unless a report has been furnished to the court before the commencement day under section 28 (as in force immediately before that day) in respect of the authorisation.
- (6) A warrant or emergency authorisation may be issued or given under this Act as in force on and after the commencement day in relation to an offence that was committed before the commencement day.
- (7) In this section—

commencement day means the day on which section 18 of the **Surveillance Devices (Amendment) Act 2004** comes into operation;

existing emergency authorisation means an existing emergency authorisation (drugs) or an existing emergency authorisation (violence or damage);

existing emergency authorisation (drugs) means an emergency authorisation given under section 26 as in force immediately before the commencement day on a ground referred to in section 25(1)(a)(ii) as in force at that time;

existing emergency authorisation (violence or damage) means an emergency authorisation given under section 26 as in force immediately before the commencement day on a ground referred to in section 25(1)(a)(i) as in force at that time;

existing retrieval warrant means a retrieval warrant issued under section 17 as in force immediately before the commencement day;

existing surveillance device warrant means a warrant (other than a retrieval warrant) issued under section 17 as in force immediately before the commencement day.

42A Transitional provision—Statute Law Amendment (Directors' Liability) Act 2013

S. 42A
inserted by
No. 13/2013
s. 43.

- (1) For the avoidance of doubt, section 32 applies with respect to an offence against a provision specified in subsection (2) of that section that is alleged to have been committed by a body corporate on or after the commencement of section 41 of the **Statute Law Amendment (Directors' Liability) Act 2013**.
- (2) For the avoidance of doubt, section 32A applies with respect to an offence against a provision specified in subsection (2) of that section that is alleged to have been committed by a body corporate on or after the commencement of section 41 of the **Statute Law Amendment (Directors' Liability) Act 2013**.
- (3) This section does not limit section 14 of the **Interpretation of Legislation Act 1984**.

S. 43
inserted by
No. 82/2012
s. 141.

43 Transitional provisions—Integrity and Accountability Legislation Amendment Act 2012

- (1) An application made by an Office of Police Integrity law enforcement officer before the commencement day under Subdivision 2 or Subdivision 3 of Division 1 of Part 4, or under Division 2 of Part 4, that was not determined before that day is taken, on and from that commencement day, to be an application made by an IBAC law enforcement officer.
- (2) Any warrant issued to an Office of Police Integrity law enforcement officer before the commencement day under Subdivision 2 or Subdivision 3 of Division 1 of Part 4, or any order made under Division 2 of Part 4 on the application of an Office of Police Integrity law enforcement officer, on and from the commencement day—
 - (a) remains in force; and
 - (b) may be dealt with according to its terms by an IBAC law enforcement officer as if it had been issued to, or made on the application of, that IBAC law enforcement officer.
- (3) A surveillance device warrant issued to an Office of Police Integrity law enforcement officer before the commencement day may be revoked under section 20A on and from the commencement day—
 - (a) as if it had been issued to an IBAC law enforcement officer; and
 - (b) as if a reference in that section to the chief officer of the law enforcement agency in relation to that warrant were a reference to the Commissioner; and

- (c) in relation to a surveillance device warrant referred to in section 20A(2), the Commissioner must revoke the warrant in accordance with that subsection.
- (4) If a surveillance device warrant to which section 20B applies was issued to an Office of Police Integrity law enforcement officer before the commencement day, on and from the commencement day—
 - (a) that section applies as if the warrant had been issued to an IBAC law enforcement officer; and
 - (b) a reference in that section to the chief officer of the law enforcement agency in relation to that warrant is taken to be a reference to the Commissioner.
- (5) A retrieval warrant issued to an Office of Police Integrity law enforcement officer before the commencement day may be revoked under section 20H on and from the commencement day—
 - (a) as if it had been issued to an IBAC law enforcement officer; and
 - (b) as if a reference in that section to the chief officer of the law enforcement agency in relation to that warrant were a reference to the Commissioner; and
 - (c) in relation to a retrieval warrant referred to in section 20H(3), the Commissioner must revoke the warrant in accordance with that subsection.
- (6) An authorisation given under Division 3 of Part 4 by an Office of Police Integrity senior officer before the commencement day, on and from that commencement day—

- (a) remains in force; and
 - (b) may be dealt with according to its terms as if it were issued by an IBAC senior officer.
- (7) An application made under section 28 by an Office of Police Integrity senior officer before the commencement day that was not determined before that day is taken, on and from that commencement day, to be an application made by an IBAC senior officer.
- (8) On and from the commencement day, any obligation under section 30K relating to a warrant issued to an Office of Police Integrity law enforcement officer that had not been discharged before the commencement day must be discharged by an IBAC law enforcement officer in accordance with that section.
- (9) On and from the commencement day, any obligation under section 30L relating to the Office of Police Integrity that had not been discharged before the commencement day must be discharged by the Commissioner in accordance with that section.
- (10) If, before the commencement day, the Special Investigations Monitor had commenced but not completed an investigation under section 30P, the Victorian Inspectorate must complete the investigation in accordance with that section.
- (11) If, before the commencement day, the Special Investigations Monitor had not completed its reporting obligations under section 30Q, the Victorian Inspectorate must complete the reporting obligations in accordance with that section.

(12) In this section, *commencement day* means the day on which section 147 of the **Integrity and Accountability Legislation Amendment Act 2012** comes into operation.

44 Transitional provisions—Public Interest Monitor and repeal of Police Integrity Act 2008

S. 44
inserted by
No. 82/2012
s. 141.

If, immediately before the repeal of the **Police Integrity Act 2008** a law enforcement officer who is a prescribed member of staff of the Office of Police Integrity has made an application referred to in section 12A and the Public Interest Monitor has not, before the repeal of that Act, returned any document given by that officer to the Public Interest Monitor under section 12B or 12C in relation to that application, on and after the repeal of that Act, the Public Interest Monitor must return those documents to the IBAC.

44A Transitional provisions—Serious Offenders Act 2018

S. 44A
inserted by
No. 27/2018
s. 351(Sch. 4
cl. 23).

(1) Despite the amendment of section 8(2)(aa) by 366 of the **Serious Offenders Act 2018**, section 8(2)(aa) has effect, on and after the commencement day, as if a reference in that section to an order made under the **Serious Offenders Act 2018** included a reference to a supervision order, detention order or interim order that is continued in force by subclause 4(1) of Schedule 4 to the **Serious Offenders Act 2018**.

(2) In this section—

commencement day means the day on which section 366 of the **Serious Offenders Act 2018** comes into operation.

45 Annual report of Victoria Police for financial year ending 30 June 2015

S. 45
inserted by
No. 27/2016
s. 43.

Section 30L(4) and (5) as substituted by section 42 of the **Confiscation and Other Matters Amendment Act 2016** apply to

Surveillance Devices Act 1999

No. 21 of 1999

Part 7—Repeals, transitional provisions and consequential amendments

the annual report of Victoria Police for the financial year ending 30 June 2015 as if those provisions were in force when the report was submitted to the Minister and laid before each House of Parliament.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 25 March 1999

Legislative Council: 5 May 1999

The long title for the Bill for this Act was "A Bill to regulate the installation, use and maintenance of surveillance devices and restrict the publication of information gained from their use, to repeal the **Listening Devices Act 1969**, to amend the **Evidence Act 1958** and for other purposes."

The **Surveillance Devices Act 1999** was assented to on 18 May 1999 and came into operation as follows:

Part 1 (sections 1–5) on 18 May 1999: section 2(1); rest of Act on 1 January 2000: section 2(3).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

Surveillance Devices Act 1999
No. 21 of 1999
Endnotes

2 Table of Amendments

This publication incorporates amendments made to the **Surveillance Devices Act 1999** by Acts and subordinate instruments.

Drugs, Poisons and Controlled Substances (Amendment) Act 2001, No. 61/2001

Assent Date: 23.10.01
Commencement Date: S. 16(2) on 1.1.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

National Crime Authority (State Provisions) (Amendment) Act 2002, No. 18/2002

Assent Date: 21.5.02
Commencement Date: S. 24 on 22.5.02: s. 2
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Criminal Justice Legislation (Miscellaneous Amendments) Act 2002, No. 35/2002

Assent Date: 18.6.02
Commencement Date: S. 28(Sch. item 6) on 19.6.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Australian Crime Commission (State Provisions) Act 2003, No. 52/2003

Assent Date: 16.6.03
Commencement Date: S. 52(Sch. 1 item 11) on 16.10.03: Government Gazette 16.10.03 p. 2624
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Fisheries (Amendment) Act 2003, No. 56/2003

Assent Date: 16.6.03
Commencement Date: Ss 8–10 on 17.6.03: s. 2
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Crimes (Money Laundering) Act 2003, No. 104/2003

Assent Date: 9.12.03
Commencement Date: S. 7 on 10.12.03: s. 2(2)
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Surveillance Devices (Amendment) Act 2004, No. 26/2004 (as amended by Nos 63/2004 (as amended by Nos 87/2005, 27/2006), 27/2006)

Assent Date: 25.5.04
Commencement Date: Ss 4–18 on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

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Endnotes

Major Crime Legislation (Office of Police Integrity) Act 2004, No. 63/2004
(as amended by No. 29/2006)

Assent Date: 12.10.04
Commencement Date: Ss 9–11 on 16.11.04: Special Gazette (No. 237)
16.11.04 p. 1; s. 12 on 1.7.06: Government Gazette
29.6.06 p. 1314
Current State: This information relates only to the provision/s
amending the **Surveillance Devices Act 1999**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 195) on 5.4.05: Government
Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s
amending the **Surveillance Devices Act 1999**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 104) on 12.12.05: Government
Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s
amending the **Surveillance Devices Act 1999**

Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date: 6.6.06
Commencement Date: S. 3(Sch. 1 item 36) on 7.6.06: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Surveillance Devices Act 1999**

Surveillance Devices (Workplace Privacy) Act 2006, No. 70/2006

Assent Date: 19.9.06
Commencement Date: S. 3 on 1.7.07: s. 2
Current State: All of Act in operation

Infringements and Other Acts Amendment Act 2008, No. 9/2008

Assent Date: 18.3.08
Commencement Date: S. 45 on 1.7.08: Special Gazette (No. 172) 27.6.08 p. 1
Current State: This information relates only to provision/s amending
the **Surveillance Devices Act 1999**

Police Integrity Act 2008, No. 34/2008

Assent Date: 1.7.08
Commencement Date: S. 143(Sch. 2 item 11) on 5.12.08 Special Gazette
(No. 340) 4.12.08 p. 1
Current State: This information relates only to the provision/s
amending the **Surveillance Devices Act 1999**

Coroners Act 2008, No. 77/2008

Assent Date: 11.12.08
Commencement Date: S. 129(Sch. 2 item 25) on 1.11.09: s. 2
Current State: This information relates only to the provision/s
amending the **Surveillance Devices Act 1999**

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Major Crime Legislation Amendment Act 2009, No. 3/2009

Assent Date: 10.2.09
Commencement Date: S. 16 on 11.2.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Justice Legislation Amendment Act 2009, No. 25/2009

Assent Date: 17.6.09
Commencement Date: Ss 34–37 on 3.9.09: Government Gazette 3.9.09 p. 2331
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 117) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 2 item 49) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Serious Sex Offenders (Detention and Supervision) Act 2009, No. 91/2009

Assent Date: 15.12.09
Commencement Date: S. 219(Sch. 3 item 4) on 1.1.10: Government Gazette 24.12.09 p. 3397
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Public Interest Monitor Act 2011, No. 72/2011

Assent Date: 6.12.11
Commencement Date: Ss 30–42 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 **Surveillance Devices Act 1999**

Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Act 2012, No. 13/2012

Assent Date: 20.3.12
Commencement Date: S. 13 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 1
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

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

Assent Date: 18.12.12
Commencement Date: Ss 138–141 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 **Surveillance Devices Act 1999**

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Statute Law Amendment (Directors' Liability) Act 2013, No. 13/2013

Assent Date: 13.3.13
Commencement Date: Ss 41–43 on 14.3.13: s. 2
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Justice Legislation Amendment (Cancellation of Parole and Other Matters) Act 2013, No. 15/2013

Assent Date: 26.3.13
Commencement Date: S. 8 on 20.5.13: Special Gazette (No. 141) 16.4.13 p. 1
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013, No. 32/2013

Assent Date: 4.6.13
Commencement Date: S. 65 on 27.7.13: Special Gazette (No. 226) 25.6.13 p. 1
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 94) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Game Management Authority Act 2014, No. 24/2014

Assent Date: 8.4.14
Commencement Date: Ss 82, 83 on 1.7.14: s. 2(2)
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 163) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Fines Reform Act 2014, No. 47/2014

Assent Date: 1.7.14
Commencement Date: S. 313 on 31.12.17: Special Gazette (No. 443) 19.12.17 p. 1
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Privacy and Data Protection Act 2014, No. 60/2014

Assent Date: 2.9.14
Commencement Date: S. 140(Sch. 3 item 45) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

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Inquiries Act 2014, No. 67/2014

Assent Date: 23.9.14
Commencement Date: S. 147(Sch. 2 item 34) on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 2
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Justice Legislation Amendment Act 2015, No. 20/2015

Assent Date: 16.6.15
Commencement Date: S. 56(Sch. 1 item 11) on 17.6.15: s. 2(3)
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Corrections Legislation Amendment Act 2015, No. 41/2015

Assent Date: 22.9.15
Commencement Date: S. 10 on 23.9.15: s. 2(1)
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Confiscation and Other Matters Amendment Act 2016, No. 27/2016

Assent Date: 31.5.16
Commencement Date: Ss 42, 43 on 1.6.16: s. 2(1); ss 40, 41 on 1.9.16: Special Gazette (No. 270) 30.8.16 p. 1
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016, No. 30/2016

Assent Date: 31.5.16
Commencement Date: S. 88 on 1.7.16: Special Gazette (No. 194) 21.6.16 p. 1
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Victorian Fisheries Authority Act 2016, No. 68/2016

Assent Date: 15.11.16
Commencement Date: Ss 171, 172 on 1.7.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Justice Legislation Amendment (Body-worn Cameras and Other Matters) Act 2017, No. 54/2017

Assent Date: 8.11.17
Commencement Date: Ss 3–7 on 18.4.18: Special Gazette (No. 178) 17.4.18 p. 1
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Oaths and Affirmations Act 2018, No. 6/2018

Assent Date: 27.2.18
Commencement Date: S. 68(Sch. 2 item 121) on 1.3.19: s. 2(2)
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

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Serious Offenders Act 2018, No. 27/2018

Assent Date: 26.6.18

Commencement Date: Ss 351(Sch. 4 cl. 23), 366 on 3.9.18: Special Gazette (No. 356) 31.7.18 p. 1

Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Justice Legislation Amendment (Police and Other Matters) Act 2019, No. 3/2019

Assent Date: 13.3.19

Commencement Date: S. 22 on 5.6.19: Special Gazette (No. 215) 4.6.19 p. 1

Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

3 Amendments Not in Operation

This publication does not include amendments made to the **Surveillance Devices Act 1999** by the following Act/s.

Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018, No. 33/2018

Assent Date: 14.8.18
Commencement Date: Ss 99–104 not yet proclaimed
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

Environment Protection Amendment Act 2018, No. 39/2018

Assent Date: 28.8.18
Commencement Date: S. 55 not yet proclaimed
Current State: This information relates only to the provision/s amending the **Surveillance Devices Act 1999**

At the date of this publication, the following provisions amending the **Surveillance Devices Act 1999** were Not in Operation:

Amending Act/s

Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018, No. 33/2018

99 Remote application

- (1) In section 16(1) of the **Surveillance Devices Act 1999**, for ", e-mail or any other means of communication" **substitute** "or other electronic communication".
- (2) In section 16(2) of the **Surveillance Devices Act 1999**, after "fax" **insert** "or other electronic communication".

100 Determining the application

After section 17(2) of the **Surveillance Devices Act 1999 insert—**

- "(3) A surveillance device warrant may be issued in paper form or electronically."

101 What must a surveillance device warrant contain?

For section 18(3) of the **Surveillance Devices Act 1999 substitute**—

- "(3) A warrant must—
- (a) be signed by the person issuing it (either by hand or with an electronic signature); and
 - (b) include the name of the person issuing it."

102 Remote application (retrieval warrant)

- (1) In section 20D(1) of the **Surveillance Devices Act 1999**, for ", e-mail or any other means of communication" **substitute** "or other electronic communication".
- (2) In section 20D(2) of the **Surveillance Devices Act 1999**, after "fax" **insert** "or other electronic communication".

103 Determining the application

After section 20E(2) of the **Surveillance Devices Act 1999 insert**—

- "(3) A retrieval warrant may be issued in paper form or electronically."

104 What must a retrieval warrant contain?

For section 20F(2) of the **Surveillance Devices Act 1999 substitute**—

- "(2) A retrieval warrant must—
- (a) be signed by the person issuing it (either by hand or with an electronic signature); and
 - (b) include the name of the person issuing it."

Environment Protection Amendment Act 2018, No. 39/2018

55 Surveillance Devices Act 1999

(1) In section 3(1) of the **Surveillance Devices Act 1999**—

(a) **insert** the following definition—

"Environment Protection Authority has the same meaning as *Authority* in section 3(1) of the **Environment Protection Act 2017**";

(b) in the definition of *chief officer*, after paragraph (e) **insert**—

"(f) in relation to the Environment Protection Authority—the chief executive officer appointed by the Governing Board of the Environment Protection Authority";

(c) in the definition of *law enforcement agency*, after paragraph (e) **insert**—

"(f) the Environment Protection Authority";

(d) in the definition of *law enforcement officer*, after paragraph (e) **insert**—

"(f) in relation to the Environment Protection Authority—an authorised officer appointed under Part 9.2 of the **Environment Protection Act 2017**";

(e) in the definition of *senior officer*, after paragraph (e) **insert**—

"(f) in relation to the Environment Protection Authority—

- (i) the chief executive officer appointed by the Governing Board of the Environment Protection Authority; or
 - (ii) an authorised officer appointed under Part 9.2 of the **Environment Protection Act 2017**;
- (2) In section 25 of the **Surveillance Devices Act 1999**—
 - (a) in paragraph (a)(ii), for "Authority; or" **substitute** "Authority";
 - (b) after paragraph (a)(ii) **insert**—
 - "(iii) the Environment Protection Authority; or";
 - (c) in paragraph (b), for "or the Game Management Authority" **substitute** ", the Game Management Authority or the Environment Protection Authority".

4 Explanatory details

No entries at date of publication.