

Public Interest Monitor Annual Report 2017-2018

Reporting Period: 1 July 2017 – 30 June 2018

Date of Report: 22 August 2018



'At the heart of a democracy is the ideal of freedom of the subject – freedom in each citizen from unlawful conduct on the part of the state or individuals. But this ideal will wither unless there exist men and women who are prepared and equipped to ensure that it is given practical effect so that the rights inherent in it are affirmed and enforced. And so, there is the necessity in every civilised community for a body of skilled and honourable advocates.'

Chief Justice of Victoria, John H Phillips

October 1994

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1 Introduction

This is the sixth annual report of the Public Interest Monitor (the PIM), for the financial year ending 30 June 2018. The report is prepared pursuant to s 19 of the *Public Interest Monitor Act 2011* (PIM Act). As required by the legislation this report relates to the performance of the functions of the Public Interest Monitors (PIMs).

2 The Public Interest Monitor

The PIM Act created the offices of the Principal PIM and Deputy PIMs. The PIMs commenced operation on 10 February 2013.

The Governor in Council appointed Brendan Murphy Q.C. the Principal PIM on 18 September 2012 for a period of three years. Mr Murphy was reappointed for a further three years on 18 September 2015. Mr Murphy resigned as Principal PIM on 4 July 2018.

Janine Gleeson was appointed Deputy PIM on 19 December 2012 and has been reappointed twice. Victoria Elliott was appointed Deputy PIM on 7 June 2016.

3 The Mission of the Public Interest Monitor

It is the mission of the PIM to:

Represent the public interest and provide greater accountability in the collection of evidence from warrants and orders that intrude on the privacy and civil liberties of Victorian citizens.

4 The Functions of the Public Interest Monitor

The PIM Act established the office of the PIM. Section 14 of the PIM Act outlines the functions of the PIM as follows:

- 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
- for the purposes of testing the content and sufficiency of the information relied on and the circumstances of the application-
 - to ask questions of any person giving information in relation to the application; and
 - to make submissions as to the appropriateness of granting the application; and
 - any other functions conferred on a Public Interest Monitor.

From 1 July 2017 the role of the PIM was expanded to include functions under the *Witness Protection Act 1991* as follows:

- to inform the making of a relevant decision by the Chief Commissioner.

The Principal PIM is required to provide a separate report to the Minister on the performance of the functions of the PIM under the *Witness Protection Act*.

The Acts under which the PIM has functions are:

- *Major Crime (Investigative Powers) Act 2004*;
- *Surveillance Devices Act 1999*;
- *Telecommunications (Interception and Access) Act 1979* (Cth) by virtue of the *Telecommunications (Interception) (State Provisions) Act 1988*;
- *Terrorism (Community Protection) Act 2003*; and
- *Witness Protection Act 1991*.

Section 15 of the PIM Act allows the Principal PIM to issue guidelines about how a Deputy PIM is to perform his/her functions. To assist in understanding the role and functions of the PIM, comprehensive Standard Operating Procedures (SOPS) were compiled and provided to each applicant agency and tribunal.

5 Relevant Applications

Section 4 of the PIM Act defines a 'relevant application' as an application for:

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

Applicants are not required to notify the PIM when making applications for 'stored communication' warrants.

Law enforcement agencies required to notify the PIM of a relevant application are Victoria Police (VP), the Australian Criminal Intelligence Commission (ACIC), the Independent Broad-based Anti-corruption Commission (IBAC), the Department of Environment Land, Water and Planning (DELWP), the Department of Economic Development, Jobs Transport and Resources (DEDJTR) and the Game Management Authority. Within Victoria Police, relevant applications are made by the Office of Chief Examiner (OCE), Special Projects Unit (SPU), Professional Standards Command (PSC) and Legal Services Department (LSD). The Administrative Appeals Tribunal (AAT) hears and determines applications for telecommunications interception warrants. The Supreme Court deals with all other relevant applications, except for tracking devices under the *Surveillance Devices Act 1999*, which may be heard and determined by the Magistrates' Court.

Except in limited circumstances, a PIM attended every hearing of a relevant application. The applicant provided the PIM with a draft affidavit prior to the listing of matters for hearing. On most occasions, the PIM had questions and raised issues in relation to applications. In the main, these issues were dealt with in a satisfactory manner prior to the parties attending court or the AAT, thereby minimising the time required for hearings.

6 Relevant Applications Data

6.1 Total Number of Relevant Applications

In the period from 1 July 2017 to 30 June 2018 the total number of relevant applications numbered 387.

6.2 Number of Relevant Applications by each Law Enforcement Agency

VP ¹	ACC	DELWP DEDJTR ²	IBAC	OCE
338	0	1	44	4

6.3 Number of Relevant Applications made by each Law Enforcement Agency in which the PIM appeared

VP	ACC	DELWP DEDJTR	IBAC	OCE
313	0	1	43	4

6.4 Number of Orders Made, Warrants Issued or Authorisations Approved on Relevant Applications

VP	ACC	DELWP DEDJTR	IBAC	OCE
322	0	1	41	4

6.5 Number of Relevant Applications made by Telephone

VP	ACC	DELWP DEDJTR	IBAC	OCE
12	0	0	0	0

6.6 Number of Relevant Applications by each Law Enforcement Agency that were Refused

VP	ACC	DELWP DEDJTR	IBAC	OCE
4	0	0	3	0

6.7 Number of Relevant Applications by each Law Enforcement Agency that were Withdrawn

VP	ACC	DELWP DEDJTR	IBAC	OCE
12	0	0	0	0



Victoria Elliott
Acting Principal Public Interest Monitor
22 August 2018

¹ Includes applications made by the Special Projects Unit, Professional Standards Command and Legal Services Department.

² Includes the Game Management Authority.

**Public Interest Monitor
Financial Management Compliance Attestation Statement**

Public Interest Monitor **has not identified any Material Compliance Deficiency** in relation to 2017-18.

I, Victoria Elliott, Accountable Officer certify that the Organisation has complied with the applicable Standing Directions of the Minister for Finance under the *Financial Management Act 1994* and Instructions.

Signature: 
Date: 22/08/2018

