



**Victorian Inspectorate Report to the Parliament of Victoria on  
Victoria Police pursuant to s. 30Q of the *Surveillance Devices  
Act* 1999**

**Report No. 2 for 2014-2015**

5 August 2015



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## List of Abbreviations

CCP	Chief Commissioner of Police
CSG	Compliance Support Group (within DELWP)
DEDJTR	Department of Economic Development, Jobs, Transport and Resources
DELWP	Department of Environment, Land, Water and Planning
DEPI	Department of Environment and Primary Industries
GMA	Game Management Authority
IBAC	Independent Broad-based Anti-corruption Commission
PI	Protected information
PIM	Public Interest Monitor
PI register	Protected information register
PSC	Professional Standards Command (Victoria Police)
SD Act	<i>Surveillance Devices Act</i> 1999 (Vic)
SPU	Special Projects Unit (within Intelligence and Covert Operations Support at Victoria Police)
TPU	Technical Projects Unit (within Professional Standards Command at Victoria Police)
VI	Victorian Inspectorate



## INTRODUCTION

The *Surveillance Devices Act 1999* (SD Act) regulates the use of surveillance devices in the State of Victoria. The SD Act makes provision for warrants and emergency authorisations permitting the installation, use, maintenance and retrieval of surveillance devices by five State law enforcement agencies.<sup>1</sup> Use of surveillance devices in relation to private activity and private conversations is otherwise generally unlawful in Victoria.<sup>2</sup>

The SD Act imposes a regime of strict controls relating to the use of surveillance devices, including requirements for agencies to make and keep records and documents and to destroy certain material when it is not likely to be further required for an authorised purpose. It also provides for the independent inspection of agency records and documents by the Victorian Inspectorate (VI). The VI inspects agency records, assessing statutory compliance and reporting compliance results to Parliament bi-annually. The involvement of the Public Interest Monitor<sup>3</sup> (PIM) in the warrant application process has added another level of scrutiny to the control and oversight regimes.

In accordance with statutory obligations<sup>4</sup> set out in the SD Act, this report is submitted to the Parliament of Victoria with a copy provided to the Minister responsible for the SD Act, the Attorney-General. The VI prepares a separate report on each agency authorised to use the provisions of the SD Act. This report outlines the results of VI inspections of Victoria Police records conducted between 1 July 2014 and 30 June 2015. The report comments on the level of statutory compliance achieved by Victoria Police and its law enforcement officers for the 2014-2015 reporting period.

## FEATURES OF THE LEGISLATION

### OBJECTIVES OF THE SD ACT

The primary purposes of the SD Act<sup>5</sup> are to:

- regulate the installation, use, maintenance and retrieval of surveillance devices
- restrict the use, communication and publication of information obtained through the use of surveillance devices or otherwise connected with surveillance device operations
- establish procedures for law enforcement officers to obtain warrants or emergency authorisations for the installation, use, maintenance and retrieval of surveillance devices
- create offences relating to the improper installation or use of surveillance devices

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<sup>1</sup> The *Surveillance Devices Act 1999* (SD Act) also permits the Australian Crime Commission (ACC) to use the provisions of the Act. Inspection of ACC records and documents is conducted by the Commonwealth Ombudsman pursuant to s. 55(2) of the *Surveillance Devices Act 2004* (Cth).

<sup>2</sup> The SD Act provides for certain exceptions at ss. 5, 6(2), 7(2), 8(2), 9(2), 9B(2)(b) and (c), 9C(2).

<sup>3</sup> Established by the *Public Interest Monitor Act 2011*.

<sup>4</sup> SD Act s. 30Q.

<sup>5</sup> SD Act s. 1.

- impose requirements for the secure storage and destruction of records and for the making of reports to judges, magistrates and to Parliament in connection with surveillance device operations
- recognise (subject to the *Surveillance Devices Regulations 2006*) warrants and emergency authorisations issued in other jurisdictions authorising the installation, use and retrieval of surveillance devices.

## AGENCIES PERMITTED TO USE SURVEILLANCE DEVICES

During the period under review, six state law enforcement agencies<sup>6</sup> were permitted to use surveillance devices under the SD Act:

- Victoria Police
- Independent Broad-based Anti-corruption Commission (IBAC)
- Department of Environment, Land, Water and Planning (DELWP) - from 1 January 2015
- Department of Economic Development, Jobs, Transport and Resources (DEDJTR) - from 1 January 2015
- Department of Environment and Primary Industries (DEPI) - to 31 December 2014
- Game Management Authority (GMA)

During the period under report government departmental changes have occurred. On 1 January 2015, DEPI ceased to exist, and two new departments were created and took over the functions of DEPI. As a result of this, the two divisions within the former DEPI which used the powers under the SD Act (Fisheries Victoria and Compliance Support Group (CSG)) are now located in separate departments. Fisheries Victoria now forms part of the DEDJTR; while CSG comes within the DELWP.

## TYPES OF SURVEILLANCE DEVICES

The SD Act provides for the use of the following surveillance devices:<sup>7</sup>

- data surveillance devices
- listening devices
- optical devices
- tracking devices.

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<sup>6</sup> Law enforcement agency is defined in s. 3.

<sup>7</sup> Surveillance device is defined in s. 3.

## WARRANTS AND EMERGENCY AUTHORISATIONS

The SD Act provides for the issue of surveillance device warrants<sup>8</sup> and retrieval warrants<sup>9</sup> and in a limited range of circumstances for emergency authorisation<sup>10</sup> of the use of surveillance devices. A warrant must be sought from a Supreme Court Judge, except in the case of an application for a tracking device only, where the application may be made to a magistrate. An emergency authorisation may only be granted by a senior officer of Victoria Police or the IBAC.<sup>11</sup>

## RECORDS, DOCUMENTS AND REPORTS REQUIRED BY THE SD ACT

The SD Act requires each agency to retain certain documents and to make certain records in connection with the use of surveillance devices. These requirements are set out fully in the Act.<sup>12</sup>

Each agency is required to report to the judge or magistrate who issued a warrant under the Act by a date specified in the warrant. The SD Act prescribes a number of matters that must be included in such reports.<sup>13</sup> The chief officer of each agency is also required to report annually to the Minister<sup>14</sup> in relation to the agency's use of surveillance devices.

## SECURITY AND DESTRUCTION OF INFORMATION OBTAINED

The SD Act prescribes agency obligations to keep information obtained by means of a surveillance device secure<sup>15</sup> and to undertake the destruction of such information<sup>16</sup> when it is unlikely to be required for a permitted purpose.<sup>17</sup>

## PROTECTED INFORMATION REGISTERS

For the purpose of this report, the term 'protected information' (PI) will (unless otherwise specified) be used to refer only to information obtained by means of a surveillance device, although the SD Act gives the term a wider definition.<sup>18</sup> The SD Act limits and regulates the use, communication and publication of PI.<sup>19</sup>

Section 30N of the SD Act requires records to be kept of a number of matters relating to the use and communication of PI. Somewhat confusingly, the term 'register' is used by all agencies for the records

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<sup>8</sup> SD Act ss. 15 to 20.

<sup>9</sup> Ibid ss. 20C to 20G.

<sup>10</sup> Ibid ss. 25 to 30.

<sup>11</sup> Ibid ss. 25 and 26.

<sup>12</sup> Ibid ss. 30M, 30N and 30O.

<sup>13</sup> Ibid s. 30K.

<sup>14</sup> Ibid s. 30L.

<sup>15</sup> Ibid s. 30H(1)(a).

<sup>16</sup> Ibid s. 30H(1)(b).

<sup>17</sup> Defined in SD Act ss. 30F and 30G.

<sup>18</sup> SD Act s. 30D.

<sup>19</sup> Ibid s. 30E.

(PI registers) kept by them for the purpose of s. 30N(c) - (e), although that section does not itself require a 'register'. The agency PI registers referred to in this report should not be confused with the required register of warrants and emergency authorisations maintained by each agency pursuant to s. 30O. The two are quite different documents.

## THE VICTORIAN INSPECTORATE

### ROLE OF THE VI

The VI must, from time to time, inspect the records of Victorian law enforcement agencies with authority to use surveillance devices under a warrant or emergency authorisation to determine the extent of compliance with the Act.<sup>20</sup> The SD Act requires the VI report to Parliament at six-monthly intervals (after 1 January and 1 July each year) on the results of each inspection under s. 30P and to give a copy of each report to the Minister at the same time as it is transmitted to the Parliament.<sup>21</sup>

### THE POWERS OF THE VI UNDER THE SD ACT

For the purpose of an inspection pursuant to the SD Act the VI is provided with certain powers<sup>22</sup> to access agency premises, records and information and to require members of staff of the agency to provide information in their possession that the VI considers necessary and relevant to the inspection.

## INSPECTION OF AGENCY RECORDS

### METHODOLOGY

This report addresses the results of inspections undertaken by the VI from 1 July 2014 to 30 June 2015. Each inspection included examination of the various documents,<sup>23</sup> records,<sup>24</sup> reports,<sup>25</sup> registers<sup>26</sup> and other relevant material held by Victoria Police. All records relating to all warrants were inspected, with one exception where a sample only of evidentiary certificates was inspected.

The VI has an established process for inspections whereby a warrant file relating to Victoria Police is not inspected until reporting requirements under s. 30K of the SD Act for the warrant have been completed. This practice obviates the need for VI officers to return to warrant files on multiple occasions and enables a better assessment to be made of the level of statutory compliance achieved in respect

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<sup>20</sup> Ibid s. 30P(1).

<sup>21</sup> Ibid s. 30Q.

<sup>22</sup> Ibid s. 30P(2).

<sup>23</sup> Ibid s. 30M.

<sup>24</sup> Ibid s. 30N.

<sup>25</sup> Ibid s. 30K.

<sup>26</sup> Ibid ss. 30N and 30O.

of each warrant. This process differs from that applied to DELWP, DEDJTR and GMA records, whereby the warrant file is inspected even if the file is not yet completed, as those agencies make only occasional use of the provisions of the SD Act.

In 2014-2015 Victoria Police warrant files and related investigator records were inspected bi-annually.

## ASSESSING COMPLIANCE

Section 30P(1) of the SD Act requires the VI to inspect the records of each law enforcement agency to determine the extent of the agency's compliance with the Act. Where appropriate, further information may be sought from relevant law enforcement officers. The records and documents inspected for each warrant are considered against all of the agency's statutory obligations to the extent relevant to the particular warrant.

Compliance obligations include requirements relating to:

- the process for obtaining warrants
- the use of authorised surveillance devices
- the keeping of required records and documents
- restrictions on the use, communication and publication of PI
- restrictions on reporting information obtained by a surveillance device warrant
- the reports that must be made
- the security and destruction of PI obtained by means of a surveillance device.

In reporting the results of each inspection in the following sections of this report, it is not practicable to include comment on every compliance requirement under the SD Act. Comment is made, however, when a compliance issue has been identified or when there is some other particular reason to include it.

## INSPECTION RESULTS

### VICTORIA POLICE

Two units within Victoria Police administer surveillance device and retrieval warrants and emergency authorisations granted under the SD Act. The Special Projects Unit (SPU) manages the majority of warrants for Victoria Police, while a small number of warrants are administered by the Technical Projects Unit (TPU) within Professional Standards Command (PSC), mainly for PSC investigations. These units operate independently of each other.

## RECORDS INSPECTED

In 2014-2015 the VI undertook two inspections of Victoria Police surveillance device warrant files at SPU and TPU, and two field inspections of PI Registers. This report discusses statutory compliance issues identified during the warrant file inspections conducted in September 2014 and March 2015 and the PI Register inspections conducted in October/November 2014 and May 2015.

## WARRANT FILES

A total of 90 warrant files were inspected during the 2014-2015 year. This is the number of warrants which ceased to be in force during the 2014 calendar year across SPU and TPU and were therefore due for inspection. Of the 90 warrants, 79 were surveillance device warrants (including one remote application) and eight were retrieval warrants. Three emergency authorisations for the use of surveillance devices in circumstances provided for in s. 26 of the SD Act ceased to be in force during the period under review.

## PI REGISTERS ISSUED TO INVESTIGATORS

Field inspections were conducted in October/November 2014 and May 2015. A total of 83 PI registers were inspected during the reporting period, with the VI inspecting PI registers at 16 Police units during the first field inspection and 14 Police units during the second. There was no in-the-field inspection of a small number of registers, because either the register had been returned to SPU by the investigators or there were practical considerations that made a field trip inappropriate. Such registers were inspected at SPU or at the VI office.

The number of PI registers inspected by the VI in 2014-2015 has no correlation with the number of warrants obtained by Victoria Police during the same period. There are a number of reasons for this:

- some surveillance device warrants are issued but never executed and a PI register is not created
- PI registers are not created for retrieval warrants
- PI registers may not be created for warrants authorising data surveillance
- A number of PI registers are inspected for a second time if substantial new records are likely to be made following a first inspection, or if errors in the register were previously detected.

## KEEPING DOCUMENTS CONNECTED WITH WARRANTS: SECTION 30M

Section 30M of the SD Act provides that the Chief Commissioner of Police (CCP) as chief officer of the agency, must cause certain documents to be kept in the records of Victoria Police.

A summary of the level of compliance achieved by Victoria Police with s. 30M is set out in Table 1 below.

Table 1: Documents to be kept pursuant to s. 30M

Documents to be kept under s. 30M	No. of warrant files compliant	No. of warrant files not compliant
Each warrant s. 30M(a)	87	0
Each notice of revocation by a judge or magistrate under s. 20A(3) s. 30M(b)	1	0
Each emergency authorisation s. 30M(c)	3	0
Each application for emergency authorisation s. 30M(d)	3	0
A copy of each application for a warrant, extension, variation or revocation of a warrant or for approval of the exercise of powers under an emergency authorisation s. 30M(e)	90	0
A copy of each report to a judge or magistrate under s. 30K s. 30M(f)	87	0

A copy of each report to a judge or magistrate under s. 30K

All files contained a copy of the s. 30K report however on two files the report was missing one page due to administrative errors. Keeping a copy of the report on file is a statutory requirement, but the VI considered that a page missing from a report did not constitute non-compliance with the requirement. The matter was raised with Victoria Police following the inspection and they have indicated that they will replace the copy of the report on the files.

### OTHER RECORDS TO BE KEPT: SECTION 30N

Section 30N of the SD Act provides that the CCP must cause certain records in connection with surveillance devices to be kept in the records of Victoria Police. A summary of the level of compliance achieved by Victoria Police with s. 30N is set out in Tables 2(a) and 2(b), below. The data in Table 2(a) are obtained during warrant file inspections. The data presented in Table 2(b) relating to use, communication and giving in evidence of PI<sup>27</sup> are drawn from the 83 PI registers inspected and cross-checked with any relevant information contained in the corresponding warrant files.

<sup>27</sup> As required to be recorded by s. 30N(c)-(e) of the SD Act.

Table 2(a): Records to be kept pursuant to s. 30N(a)-(b)

Records to be kept: s. 30N	No. of warrant files compliant	No. of warrant files not compliant
Statement as to whether each application for a warrant, extension, variation or revocation was granted, refused or withdrawn s. 30N(a)	87	0
Statement as to whether each application for an emergency authorisation or for approval of powers exercised under an emergency authorisation was granted, refused or withdrawn s. 30N(b)	3	0

Table 2(b): Records to be kept pursuant to s. 30N(c)-(e)

Records to be kept: s. 30N	No. PI registers compliant	No. PI registers not compliant
Details of each use of information obtained by use of a surveillance device under a warrant s. 30N(c)	70	13
Details of each communication to a person other than a law enforcement officer of the agency, of information obtained by the use of a surveillance device s. 30N(d)	72	11
Details of each occasion when, to the knowledge of a law enforcement officer of the agency, information obtained by a surveillance device was given in evidence in a 'relevant' proceeding s. 30N(e)	83	0

Recording each use and communication of PI: ss. 30N(c) and (d)

Victoria Police issues a PI register to an investigator once a warrant has been executed. The VI inspects these records to ensure records are made pursuant to ss. 30N(c)-(d). When the VI detects any errors (including omissions), Victoria Police is informed and provided with the relevant details. The VI assesses an 'error' as:

- a failure to make a required record
- an entry made that is wrong in content
- an entry recorded against the wrong warrant.

As noted in Table 2(b), 13 PI Registers containing new entries had use errors<sup>28</sup> and 11 had communication errors.<sup>29</sup> However these figures refer only to the number of PI registers identified with that particular error type, not the total number of errors detected (as some PI registers contain multiple errors). In total, 13 (16%) of the 83 PI registers inspected contained at least one error (being either a use or communication error). This error rate has decreased from last year where 26% of 89 PI registers inspected contained at least one error. It is pleasing to see the rate is decreasing, however the VI is of the view that the error rate remains too high.

Table 3 below provides further insight into the errors detected at the field inspections. Of the 83 PI registers inspected 67 were new PI registers; that is, they were PI registers that the VI had not previously inspected. Of these 67 registers, 37 were identified as requiring a use and/or communication entry to have been recorded. Eleven of the 37 were identified as containing an error. This equates to an error rate of 30% across the 37 registers requiring entries. The comparable error rate for the previous year (2013-2014) was 29%. The error rate has remained unchanged over the reporting period which is disappointing given the new initiatives Victoria Police have implemented to assist in lowering the error rate in relation to recording and reporting requirements.

**Table 3: Investigator Record-keeping Errors**

	Inspection Round 1	Inspection Round 2	Total
<b>Number Registers inspected for the first time</b>	<b>32</b>	<b>35</b>	<b>67</b>
Registers where entries required	14	23	37
Registers with one or more errors	4	7	11
<b>Number Registers reinspected due to previous errors</b>	<b>12</b>	<b>4</b>	<b>16</b>
Registers where errors were amended	8	3	11
Registers where new entries required	3	0	3
Registers with one or more errors	2 <sup>30</sup>	0	2
<b>Number Registers reinspected where new entries expected</b>	<b>0</b>	<b>0</b>	<b>0</b>
Registers with one or more errors	0	0	0

In assessing use and communication errors separately, the error rate for the new PI registers is:

- Eleven (11) contained at least one use error (30% of the new registers)
- Nine (9) contained at least one communication error (24% of the new registers).

<sup>28</sup> SD Act s. 30N(c).

<sup>29</sup> SD Act s. 30N(d).

<sup>30</sup> The total number of registers with errors for round 1 is six. This is one less than reported in the VI SD Report No. 1 for 2014-2015. This is due to being advised that an error detected was not a PI register error but was in fact a s. 30K reporting error.

It is clear that accurate recording of use and communication of information obtained by use of a surveillance device remains an issue for Victoria Police, with the error rate remaining at a similar level to 2013-2014.

Of the 16 PI registers reinspected due to previous errors, five (31%) had not been rectified following the first inspection. Of these 16 registers reinspected, three required new entries and it is disappointing that two of these also contained a further error. Furthermore, one of the PI registers which contained a new error is the same PI register in which errors identified previously had not been rectified.

During the reporting period no PI registers were reinspected because of likely new entries.

The following list provides an overview of some of the types of errors that the VI identified during the inspection of PI registers. The errors were identified in either new PI registers or PI registers containing new entries (a total of 40 PI registers) and it should be noted that the figures refer to the number of errors and not the number of PI registers as some PI registers contain multiple errors:

- Seven errors related to the recording of use and communication of PI in a brief of evidence
- Five errors related to the use of PI in covert aspects of an investigation
- Three errors related to the use and communication of PI in search warrant applications.

The failure to record use and communications associated with brief of evidence material accurately accounts for the majority of errors. This is consistent with errors reported in the VI's second surveillance devices report for 2013-2014, however the number of errors relating to briefs of evidence has decreased by almost half (the number of registers inspected has also decreased, by six, from 89 to 83). The error again arises from discrepancies between the use and communication section and the evidentiary material movement section of the PI register. Investigators correctly complete the evidentiary material movement section but fail to then also enter this information in the use and communication section. The use and communication section of the PI register is the section that is required to be kept in order to comply with the provisions of ss. 30N(c)-(e). It is clear from the decreasing error rate that Victoria Police has aimed to improve compliance with this requirement for the 2014-2015 year. However the errors continue to occur despite registers containing clear examples regarding the recording of the use and communication of PI in briefs of evidence as well as the implementation of new procedures.

The second most common error identified relates to recording the use of PI to manage covert aspects of an investigation. This error type was identified last year, however it was not rated as one of the most consistently occurring errors. While the number of errors is low, it is disappointing that the error has occurred as the VI were advised prior to the inspections that where SPU identified errors in the PI registers, the investigator was advised to make the correction. In some instances there was a failure to make the required correction which inevitably led to an error being detected in the PI register that could have been easily avoided.

While Victoria Police continues to focus on compliance and implement new processes, the issues associated with recording the use and communication of PI continue to impact on Victoria Police achieving full compliance. SPU, in particular, has implemented a number of processes over the last 18 months to improve the accuracy of recording and reporting, including contacting investigators to advise

when particular uses or communications are required to be included in PI registers. However, as the recording and amending of information in PI registers primarily lies with investigators, there continues to be failure or an apparent lack of understanding by the squads and units as to the necessity to record details of use and communication in the PI register. SPU is in the process of implementing new PI registers which will be similar to those currently used by TPU. The impact that the new PI registers may have on the accurate recording of use and communications will not be known for at least another 12 months.

#### Other matters

While not presently considered an error for the purpose of this report, the inspection of PI registers revealed a further issue occurring in three PI registers. For a particular entry there was a failure to record the dates of use and/or communication of PI properly. This is currently not considered an error as the use can be clearly ascertained, however the date range is required to ensure that a complete entry is made in the register.

### OTHER COMPLIANCE REQUIREMENTS

In addition to the requirement to keep certain documents and records, the CCP is required to comply with a number of other obligations imposed by the SD Act. These compliance requirements relate to various sections of the SD Act and include those listed in Tables 4 to 6 below.

A summary of the level of compliance achieved by Victoria Police is shown in the tables. Where appropriate, further explanation or comment follows the tables.

#### Discontinuance and revocation of warrants - s 20B

If the grounds for a surveillance device or retrieval warrant no longer exist or the use of a device is no longer necessary, the CCP must be informed immediately and the warrant revoked.

Of the 79 surveillance device warrants executed, 51 were discontinued and revoked by the chief officer's delegate before the expiry of the warrant. A further six warrants were not executed, all of which were also revoked by the chief officer.

Eight retrieval warrants were issued during the period and three were revoked. As reported in the VI's first SD Report for 2014-2015, the VI identified an issue regarding the failure to revoke five retrieval warrants despite the warrant having been executed and the purpose for which the warrants were granted having been met. After obtaining further information from Victoria Police, the VI regarded this a practice issue rather than a strict compliance requirement. Following these discussions, Victoria Police has since informed the VI that it has ceased this practice and all future retrieval warrants will now be revoked once executed and the grounds for the warrant no longer exist. Victoria Police is receptive to VI feedback, which has enabled the issue to be quickly resolved.

Victoria Police continues to demonstrate a high level of compliance with the requirements of the SD Act, in that they frequently discontinue (if executed) and revoke a warrant if the grounds for the warrant no longer exist.

Table 4: Other compliance requirements under the SD Act

Other compliance requirements	No. of warrant files compliant	No. of warrant files not compliant
Discontinue use of a surveillance device. Revoke the warrant in certain circumstances. s. 20B	51	0
Revocation of retrieval warrants by chief officer. s. 20H(3)	3	0
Law enforcement officer to inform chief officer if use of a surveillance device is no longer necessary or grounds for retrieval warrant cease to exist. s. 20B(4) & s. 20H(4)	60	0
Report to judge or magistrate under s. 30K made on time and includes required information. s. 30K(1)	78	9
Applications to be made only with the approval of a 'senior' or 'authorised' officer. s. 15(2)	90	0

#### Report to Judge or Magistrate - s. 30K

Section 30K requires the law enforcement officer to whom a surveillance device or retrieval warrant is issued, or who is primarily responsible for the execution of a warrant, to make a report to the issuing judge or magistrate before a date specified in the warrant. The report must contain certain prescribed information; the accuracy of this information is important in providing judges and magistrates with evidence of the value of the use of surveillance devices. Eighty-seven reports were inspected in the period under report, 41 in September 2014 and 46 in March 2015. Sixty-nine corresponding PI registers were also inspected during the reporting period. The information gathered at both inspection types enables a more accurate assessment of compliance with s. 30K reporting provisions.

Table 5: Reporting Errors - section 30K report to judge or magistrate

	First Inspection	Second Inspection	Total
Number of warrant files inspected	41	46	87
Use error <sup>31</sup>	3	0	3
Other error	4	2	6

A total of nine reports were found to contain deficiencies regarding the prescribed information. Seven of the nine reports that contained errors were identified at the first inspection and two at the second inspection. This is an error rate of 10% and it has decreased by half since the 2013-2014 period, where the error rate was 20% (15 out of 75 reports). The majority of errors were detected at warrant file inspections, which differs from the reporting in previous years where the error was not usually detected until the inspection of the corresponding PI register. However this change could be attributed to the introduction of a new procedure at Victoria Police. It should also be noted that the error types have changed over the past 12 months. In this reporting period only three use errors were detected, whereas in the previous 12 months, there were 12 use errors. Victoria Police has over the last 12 months implemented new processes to assist in the compilation of accurate reports. Given the very low number of reports with errors detected, particularly at the second inspection, the new processes are clearly assisting in the production of accurate reports.

For the period under report the following errors were detected:

- four reports omitted required information including the use of PI and the names of the persons whose activities were monitored by the use of a device
- one report, while including the name of the person whose activities were monitored by use of a surveillance device, incorrectly stated the name
- three reports were identified to not sufficiently address the benefit derived from the use of a surveillance device and
- one report included a use which was not made.

Aside from strict compliance issues, practice matters were identified during the reporting period in relation to s. 30K reports and these have been raised with Victoria Police. These included minor discrepancies in dates and consistency of wording used when a device may be installed but not activated. As discussed in relation to s. 30(M), on two files the copy of the report kept was incomplete as the final page was missing. Victoria Police has indicated that it will implement further quality checking procedures to ensure that the information in reports more accurately reflects what occurred under the authority of the warrant.

<sup>31</sup> The use error and other error figures are derived from the warrant file inspection and the field inspections.

Table 6: Further (general) compliance requirements

Other compliance requirements	Level of Compliance Complete/Satisfactory/Unsatisfactory
Maintain a register of warrants and emergency authorisations with required details. s. 30O	Satisfactory
Records and reports obtained by use of a surveillance device under warrant kept secure from unauthorised persons. s. 30H(1)(a)	Complete
Destruction of records and reports. s. 30H(1)(b)	Complete
Annual report to Minister by chief officer of the agency. s. 30L	Complete
A copy of each evidential certificate issued under s. 36. s. 30M(g)	Complete
Details of the destruction of records or reports under s. 30H(1)(b). s. 30N(f)	Complete

#### Maintain a register of warrants and emergency authorisations with required details - s. 30(O)

Victoria Police maintains a register to capture the information required by s. 30(O) and this register also incorporates the requirements under ss. 30N(a) and 30N(b). The register includes all required information and while very minor errors may be identified during the inspection (such as a date discrepancy) these are administrative errors. Given the number of entries in the register, it is anticipated that a level of human error will occur and as errors are very minor in nature, the level of compliance by Victoria Police with these requirements under the SD Act is considered satisfactory.

#### A copy of each evidentiary certificate issued - s. 36

Inspection of evidentiary certificates was undertaken twice during the period under report in July 2014 and May 2015.

In July 2014 the VI requested to look at certificates produced between 1 January 2013 to 30 June 2013 and 1 January 2014 and 30 June 2014. A total of eighteen warrant files had at least one certificate served during that period. Twelve files were inspected and 37 individual certificates were sighted.

In May 2015, the VI requested any certificates that had been produced between 1 July and 31 December 2014. Eight files were inspected and a total of 11 certificates were sighted.

All warrant files recorded by Victoria Police as having had certificates served retained a copy of the certificate on file. Victoria Police has a well-established process for recording and keeping evidentiary certificates.

## SUMMARY

Victoria Police continues to demonstrate a high level of compliance with the requirements of the SD Act. Consistent with previous years reporting, few errors were detected during the warrant file inspection, with staff and SPU and TPU registries continuing to maintain a high level of understanding of the SD Act. SPU has implemented a number of processes over the last 18 months to assist in improving the accuracy of s. 30K reporting and record keeping pursuant s. 30N(c)-(d) in PI registers. However, the majority of errors detected during the period under report remain errors identified during PI register inspections. These errors continue to impact on Victoria Police's ability to achieve full compliance.

Errors continue to occur in s. 30K reporting, however the error rate has decreased which indicates that the process used by Victoria Police to assist in improve the accuracy of the reports is effective. While there remains room for improvement a 10% error rate is pleasing, considering that the rate has decreased and the errors were minor.

Victoria Police continues to improve its level of compliance and is always receptive to feedback provided by the VI following the inspection. The introduction of new processes demonstrates Victoria Police's willingness to improve their overall compliance with the SD Act. Victoria Police continue to maintain a high level of compliance with the SD Act, however there remain some areas that require specific attention.

## RECOMMENDATIONS

No formal recommendations were made in the previous report.

The VI does not make any formal recommendations in this report.

## ACKNOWLEDGEMENT

The VI acknowledges the full cooperation of the CCP and other staff of Victoria Police. Particular note is made of the ready assistance given to the VI by SPU and the TPU registry staff who made records available for inspection and provided the answers to a number of questions asked of them.

## NEXT REPORT

As required under the SD Act the next report covering Victoria Police's use of the provisions of the SD Act will be made after 1 January 2016.

A handwritten signature in black ink that reads "Robin Brett". The signature is written in a cursive style with a large initial 'R'.

Robin Brett QC  
Inspector  
Victorian Inspectorate