



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

Report No. 2 for 2013-2014

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List of Abbreviations

CCP	Chief Commissioner of Police
CSG	Compliance Support Group (within DEPI)
DEPI	Department of Environment and Primary Industries
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 1999 (Vic)</i>
SPU	Special Projects Unit (within Intelligence and Covert Operations Support at Victoria Police)
TPU	Technical Projects Unit (within Professional Standards Command)
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 three State law enforcement agencies.¹ Use of surveillance devices in relation to private activity and private conversations is otherwise generally unlawful in Victoria.²

The SD Act imposes a regime of strict controls relating to the use of surveillance devices, including a requirement 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 Public Interest Monitor³ (PIM) involvement in the warrant application process has added another level of scrutiny to the control and oversight regimes.

In accordance with statutory obligations set out in s. 30Q of 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. This report outlines the results of VI inspections conducted of agency records between 1 July 2013 and 30 June 2014. The report comments on the level of statutory compliance achieved by each agency and its law enforcement officers for the 2013-2014 reporting period.

FEATURES OF THE LEGISLATION

OBJECTIVES OF THE SD ACT

The primary purposes of the SD Act⁴ 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

¹ 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).

² 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).

³ Established by the *Public Interest Monitor Act 2011*.

⁴ 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

Three state law enforcement agencies⁵ are permitted to use surveillance devices under the SD Act:

- Victoria Police
- Independent Broad-based Anti-corruption Commission (IBAC)
- Department of Environment and Primary Industries (DEPI).

Within DEPI, there are two divisions that may use surveillance devices, namely the Compliance Support Group (CSG)⁶ and Fisheries Victoria.

TYPES OF SURVEILLANCE DEVICES

The SD Act provides for the use of the following surveillance devices:

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

WARRANTS AND EMERGENCY AUTHORISATIONS

The SD Act provides for the issue of surveillance device warrants⁷ and retrieval warrants⁸ and in a limited range of circumstances for emergency authorisation⁹ 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.¹⁰

⁵ Law enforcement agency is defined in s. 3.

⁶ The Compliance Support Group was the unit of the Department of Sustainability and Environment which dealt with offences under various legislation including the *Wildlife Act 1975* and was referred to in previous reports as 'Wildlife'.

⁷ SD Act ss. 15 to 20.

⁸ SD Act ss. 20C to 20G.

⁹ SD Act ss. 25 to 30.

¹⁰ SD Act ss. 25 and 26.

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.¹¹

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.¹² The chief officer of each agency is also required to report annually to the Minister¹³ 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 secure¹⁴ and to undertake the destruction of such information¹⁵ when it is unlikely to be required for a permitted purpose.¹⁶

PROTECTED INFORMATION AND REGISTERS

For the purpose of this report, the use of the term 'protected information' (PI) will (unless otherwise specified) refer only to information obtained by means of a surveillance device, although in s. 30D of the SD Act the term is given a wider definition. The SD Act limits and regulates the use, communication and publication of PI.¹⁷

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 (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

Pursuant to s. 30P(1) of the SD Act 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

¹¹ SD Act ss. 30M, 30N and 30O.

¹² SD Act s. 30K.

¹³ SD Act s. 30L.

¹⁴ SD Act s. 30H(1)(a).

¹⁵ SD Act s. 30H(1)(b).

¹⁶ Defined in SD Act ss. 30F and 30G.

¹⁷ SD Act s. 30E.

authorisation to determine the extent of compliance with the Act. Section 30Q of 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.

THE POWERS OF THE VI UNDER THE SD ACT

For the purpose of an inspection pursuant to s. 30P of the SD Act the VI is provided with certain powers¹⁸ 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 2013 to 30 June 2014. Each inspection included examination of the various documents¹⁹, records²⁰, reports²¹, registers²² and other relevant material held by Victoria Police, the IBAC and DEPI. All records relating to all warrants were inspected; there was no sampling of records.

The VI has an established process for inspections whereby a warrant file relating to Victoria Police or the IBAC is not inspected until reporting requirements under s. 30K of the SD Act for the warrant have been completed. This practice negates 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 of each warrant. DEPI records, on the other hand, are inspected even if the warrant remains extant or reports have not been completed, as DEPI makes only occasional use of the provisions of the SD Act.

In 2013-2014 Victoria Police warrant files were inspected three times by the VI. Related records made or held by Victoria Police investigators but not held on individual warrant files were inspected once in each half of the financial year. The IBAC and DEPI warrant files and related investigator records were inspected twice during the reporting period, once in each half of the financial year.

This report makes reference to the number of warrant files inspected during the reporting period, however these numbers do not necessarily correspond with warrant numbers provided in the chief officer's report to the Minister pursuant to s. 30L of the SD Act. Reports under s. 30L include statistical data concerning surveillance device warrants covering the period 1 July to 30 June; but as explained

¹⁸ SD Act s. 30P(2).

¹⁹ SD Act s. 30M.

²⁰ SD Act s. 30N.

²¹ SD Act s. 30K.

²² SD Act ss. 30N and 30O.

above, the VI's inspection of agency warrant records for Victoria Police and the IBAC does not include warrants which are still extant at the time of inspection or which have expired but for which reporting under s. 30K of the SD Act is not complete.

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

The following sections of this report cover the results of the inspections carried out by the VI. Each agency is reported on separately.

DEPARTMENT OF ENVIRONMENT AND PRIMARY INDUSTRIES

There are two divisions within DEPI that may use the provisions of the SD Act to assist in their investigation of offences, those being the CSG and Fisheries Victoria. The two divisions operate independently of each other, conducting separate investigations under different legislation and separately maintaining the records and registers that are required under the SD Act. CSG and Fisheries Victoria are therefore inspected, and the results reported, separately.

COMPLIANCE SUPPORT GROUP

In 2013-2014 two surveillance device warrant files and associated documentation and records were inspected at CSG. The inspection included one completed surveillance device warrant file that was issued March 2013 and expired (following an extension) in September 2013 and one surveillance device warrant file issued in June 2014 and still current.

KEEPING DOCUMENTS CONNECTED WITH WARRANTS: SECTION 30M

No compliance issues relevant to s. 30M requirements were identified in respect of the completed warrant. As the other warrant was still in force it is not possible to assess the requirements under s. 30M. That assessment will occur at the next VI inspection by which time the warrant will have expired or been revoked (unless the period for which it is in force has been extended) and a report made by DEPI pursuant to s. 30K of the Act.

All required documents were held in relation to the completed warrant file, in compliance with s. 30M.

OTHER RECORDS TO BE KEPT: SECTION 30N

It is noted that errors detected at the December 2013 inspection regarding the failure to record the communication of PI (relating to the warrant issued in March 2013) to the Magistrates Court and PIM, as required by s. 30N(d), had been rectified.

CSG has now been assessed as compliant with the requirements of s. 30N in relation to that warrant.

OTHER COMPLIANCE REQUIREMENTS

Section 30O of the SD Act requires that the chief officer of an agency must cause a register of warrants and emergency authorisations to be kept. Specific information must be recorded in this register. At the December 2013 inspection, VI Compliance Officers noted a date discrepancy (of one day) between the date of the warrant and the issue date as recorded in the s. 30O register. This has since been rectified.

No other compliance issues were identified in the register maintained for the purpose of s. 30O.

RECOMMENDATIONS

In the VI's final report for the 2012-2013 year, three specific compliance recommendations were made in relation to record keeping by CSG. As noted in the mid-year report,²³ CSG accepted each of the recommendations. A new s.30O register was commenced with fields for all the information that may have to be recorded for each warrant obtained under the SD Act. It additionally included provision to record information required pursuant to s. 30N(a) concerning the outcome of each application to a judge or magistrate concerning a warrant. New registers were developed for records made pursuant to s. 30N(c)-(e) which require records be made about each use and or communication of information obtained by use of a surveillance device.

No new recommendations are made in this report.

FISHERIES VICTORIA

For the 2013-2014 year Fisheries Victoria had only one completed surveillance device warrant file. That file was inspected in December 2013. At the time of the second inspection in June 2014 the VI was advised that no further surveillance device warrants had been issued although one was progressing through the application process.

KEEPING DOCUMENTS CONNECTED WITH WARRANTS: SECTION 30M

As stated in the VI's first report for 2013-2014, no compliance issues were noted for the surveillance device warrant inspected in December 2013. Accordingly the agency achieved compliance with s. 30M.

OTHER RECORDS TO BE KEPT: SECTION 30N

There being no compliance issues identified in the records inspected, Fisheries Victoria has been assessed as compliant with the requirements of s. 30N.

OTHER COMPLIANCE REQUIREMENTS

No issues were identified in relation to other statutory compliance requirements relevant to the warrant inspected. Fisheries Victoria staff demonstrated a good understanding of the SD Act.

²³ Victoria Inspectorate, 'Victorian Inspectorate Report to the Parliament of Victoria pursuant to s. 30Q of the *Surveillance Devices Act 1999*', Report No. 1 for 2013-2014, 28 February 2014, www.vicinspectorate.vic.gov.au/home/reports/

RECOMMENDATIONS

No previous recommendations were made in relation to Fisheries Victoria.

No new recommendations are made in this report.

SUMMARY

CSG and Fisheries Victoria divisions of DEPI manage only a small number of surveillance device warrants. While some errors were identified during the December 2013 inspection at CSG these had been rectified prior to the June 2014 inspection, and the level of statutory compliance now achieved by both divisions indicates the positive approach taken by DEPI staff to compliance requirements.

CSG and Fisheries Victoria surveillance device records are due to be inspected again in October 2014.

ACKNOWLEDGEMENT

The VI acknowledges the full cooperation of DEPI staff from CSG and Fisheries Victoria in making records available for inspection and assisting VI staff when necessary during the inspection process.

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

Two inspections were undertaken at the IBAC, namely in October 2013 and April 2014. One completed surveillance device warrant file was inspected. Additionally, documentation relating to the destruction of some of the surveillance device information obtained by the former Office of Police Integrity was inspected.

RECORDS INSPECTED

KEEPING DOCUMENTS CONNECTED WITH WARRANTS: SECTION 30M

One completed surveillance device warrant file was inspected at the IBAC in April 2014. No errors were identified in relation to compliance with s. 30M.

The IBAC was compliant with all relevant requirements under s. 30M.

OTHER RECORDS TO BE KEPT: SECTION 30N

Record each use and external communication of information obtained and each occasion such material was given in evidence in a relevant proceeding - s. 30N(c)-(e)

New PI registers had been developed by IBAC during the course of this reporting period. Inspection of the PI register relating to the one warrant file examined by the VI found that all relevant compliance requirements under ss. 30N(c) to (e) of the SD Act had been met.

Keep details of information destroyed - s. 30N(f)

As noted in the VI's first report for 2013-2014²⁴, the IBAC has continued to undertake the destruction of surveillance device material relating to the former Office of Police Integrity. There was one further destruction undertaken since the VI's previous inspection in October 2013. All documentation produced to record this destruction was compliant with s. 30N(f) of the SD Act with a good level of detail recorded.

OTHER COMPLIANCE REQUIREMENTS

Report to judge or magistrate - s. 30K

The report required to be made pursuant to s. 30K of the SD Act after the warrant expired was reviewed and assessed as compliant. It was submitted to the judge who had issued the warrant before the date specified in the warrant. The report included all of the content required by s. 30K.

Compliance with s. 30K of the SD Act was achieved.

²⁴ Report No. 1 for 2013-2014, above n 24.

Register of warrants and emergency authorisations kept - s. 30O

The IBAC register kept pursuant to s. 30O for recording specific information relating to warrants and emergency authorisations was inspected twice during 2013-2014. As noted in the VI's first surveillance device report for 2013-2014 the register has the capability of recording all of the required information, including that to be recorded for retrieval warrants and emergency authorisations. The register also records a statement for the purpose of compliance with s. 30N(a) or (b) regarding the result of an application relating to a warrant or an application in connection with an emergency authorisation.

The register and the information entered into it was compliant with s. 30O.

Destruction of protected information pursuant to s. 30H(1)(b)

Destruction of PI is referred to above in relation to the documentation produced and retained for the purpose of compliance with s. 30N(f) of the SD Act. This documentation provided evidence of on-going review, and where appropriate, the destruction by IBAC of information obtained by the use of a surveillance device by the former Office of Police Integrity. This active management of surveillance device information is compliant with s. 30H(1)(b) of the SD Act which requires certain records and reports to be destroyed when they are not likely to be required for a purpose referred to in s. 30E(4), 30F(1) or 30(G)(1) of the Act.

SUMMARY

In 2013-2014 the IBAC developed new registers and systems to manage the records and documents required to be kept pursuant to the SD Act. While to date the records referable to only one surveillance device warrant have been reviewed, it is positive to see that new IBAC systems are already in place and are working effectively to ensure compliance with the SD Act. The VI is confident that as further warrants are obtained the IBAC is well placed to manage the compliance requirements which will arise under the SD Act.

It must be noted that the IBAC has an active and well documented process in place whereby the continued retention of information obtained by means of a surveillance device by the former Office of Police Integrity is regularly reviewed. When such information is considered by the Commissioner to be unlikely to be further required it is destroyed. Comprehensive documentation identifying the material destroyed and certifying the witnessed destruction is retained in the IBAC records. Such an active approach to managing the requirements of s. 30H(1)(b) is commendable.

RECOMMENDATIONS

No previous recommendations were made in relation to the IBAC.

No new recommendations are made in this report.

ACKNOWLEDGEMENT

The VI acknowledges the full cooperation of the IBAC Commissioner and his staff in connection with inspections conducted by the VI. In particular, the ready assistance given by the IBAC Compliance Officers in making records and relevant associated information available is appreciated.

VICTORIA POLICE

Two units within Victoria Police administer surveillance device and retrieval warrants obtained 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.

The VI attended SPU and TPU registries three times in the 2013-2014 financial year to inspect warrant files. Field inspection of records maintained in PI registers was undertaken twice. The VI visited various Police units throughout Victoria to inspect these registers to ensure that each use and external communication of PI, and the details of each occasion on which PI is given in evidence, was recorded in compliance with the SD Act.²⁵

Following the completion of each inspection documented results were provided to Victoria Police. The information provided included all errors detected in the agency's records and any relevant practice matters identified during an inspection.

RECORDS INSPECTED

WARRANT FILES

A total of 75 warrant files were inspected during the 2013-2014 year. This is the number of warrants which ceased to be in force during the 2013 calendar year across SPU and TPU and were therefore due for inspection. Of the 75 warrants, 73 were surveillance device warrants and two were retrieval warrants. No 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 2013 (the first field inspection) and in May 2014 (the second field inspection). A total of 89 PI registers were inspected during the reporting period, with the VI inspecting PI registers at 16 Police units during the first field inspection and 15 Police units during the second. In-the-field inspection did not occur with 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 Offices.

The number of PI registers inspected by the VI in 2013-2014 has no correlation with the number of warrants obtained by Victoria Police during the same period. There are a number of reasons for this:

²⁵ SD Act ss. 30N(c)-(e).

- 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 the agency.

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)	75	0
Each notice of revocation by a judge or magistrate under s. 20A(3) s. 30M(b)	N/A	N/A
Each emergency authorisation s. 30M(c)	N/A	N/A
Each application for emergency authorisation s. 30M(d)	N/A	N/A
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)	75	0
A copy of each report to a judge or magistrate under s. 30K s. 30M(f)	74	1

Only one file was identified as non-compliant in respect of the s. 30M requirements. This concerned failure to comply with s. 30M(f) by not keeping a copy of the report made pursuant to s. 30K. This was considered to have been a simple administrative oversight. Victoria Police otherwise achieved full compliance with ss. 30M(a)-(f), with SPU and TPU registries both demonstrating a sound understanding of the requirements.

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 the agency. 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) is obtained during warrant file inspections. The data presented in Table 2(b) relating to use, communication and giving in evidence of PI²⁶ is drawn from the 89 PI registers inspected and cross-checked with any relevant information contained in the corresponding warrant files.

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)	75	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)	N/A	N/A

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)	71	18
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)	70	19
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)	88	1

Victoria Police achieved compliance in relation to s. 30N(a), again demonstrating that SPU and TPU registries fully meet their obligations under the SD Act. In contrast, numerous compliance issues occur

²⁶ As required to be recorded by s. 30N(c)-(e) of the SD Act.

in relation to records required by s. 30N(c)-(e), which are the responsibility of investigators to record in PI registers issued to them for that purpose.

Recording each occasion PI is given in evidence in a 'relevant proceeding': Section 30N(e)

Of the 89 PI registers inspected one register had an error in that it did not accurately record the details of surveillance device information being given in evidence in a relevant proceeding.²⁷ A relevant proceeding has a wide definition and includes bail applications, restraint of assets, committal proceedings and trials. That there was only one problematic entry (out of 89 PI registers) relating to s. 30N(e) is a reasonable achievement.

Recording each use and communication of PI: Sections 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.

Small mistakes made or inadequate details in an entry are not counted as errors for the purpose of this report.

As noted in Table 2(b), 18 PI Registers had a use error²⁸ and 19 had a communication error.²⁹ However these figures refer only to the number of registers identified with errors, not the total number of errors detected. In total, twenty-three (26%) of the 89 PI registers inspected contained at least one error. This error rate is considered by the VI to be too high to be considered compliant with ss. 30N(c) and (d).

Table 3 provides further insight into the errors detected at various stages during the inspection process. Of the 89 PI registers inspected 55 were new PI registers: that is, they were PI registers that the VI had not previously inspected. Of these 55 registers, 38 were identified as requiring a use and/or communication entry to have been recorded. Sixteen of the 38 were identified as containing an error. This equates to an error rate of 29% across the 55 registers requiring entries. The comparable error rate for the previous (2012-2013) year was 25%. This result represents a 4% increase in 2013-2014 in the number of new PI registers with errors.

²⁷ Relevant proceeding is defined in s. 3 of the SD Act 1999.

²⁸ SD Act s. 30N(c).

²⁹ SD Act s. 30N(d).

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

- twelve (12) contained a use error (22% of the new registers)
- thirteen (13) contained a communication error (24% of the new registers).

It is clear that accurate recording of use and communication of information obtained by a surveillance device remains a significant issue for Victoria Police, with the error rate increasing in 2013-2014.

Table 3: Investigator Record-keeping Errors

	Inspection Round 1	Inspection Round 2	Total
Number Registers inspected for the first time	19	36	55
Registers where entries required	12	26	38
Registers with one or more errors	7	9	16
Number Registers reinspected due to previous errors	18	7	25
Registers where errors were amended	18	6	24
Registers where new entries required	2	2	4
Registers with one or more errors	2	1	3
Number Registers reinspected where new entries expected	7	2	9
Registers with one or more errors	3	0	3

It is positive to note that of the 25 registers reinspected because of previous errors identified, only one record had not been amended following the previous inspection. The PI register in question had contained two different errors and while one error had been amended, the second error had not: nor was information provided to the VI explaining why the error had not been rectified. Four of the 25 PI registers were identified by the VI as also requiring further entries to be added. Three of these four registers contained further errors in relation to the new entries required.

A further nine PI registers were reinspected because it was expected that new entries would be required following the previous inspection. Three of the nine contained errors. Even though the actual numbers in relation to these categories is low, it is disappointing that of the reinspected PI registers requiring new entries (13 PI registers) almost half contained an error (6 PI registers).

Following the field inspections, the VI identified two particular types of use and/or communication error consistently occurring. While various other errors were also detected these two are considered the most concerning due to the frequency with which they occurred:

- twelve (12) PI registers contained an error relating to recording brief of evidence material containing information obtained by use of a surveillance device

- ten (10) PI registers contained errors relating to recording use and/or communication of material obtained by use of a surveillance device in an application to obtain further warrants.

In relation to the brief of evidence material the majority of errors identified related to discrepancies between the use and communication section and the evidential material movement section of the PI register. Often brief of evidence material was recorded in the evidential materials section of the register but not recorded in the use and communication section; the latter being the section of the register required to be kept in order to comply with the provisions of ss. 30N(c)-(e) of the SD Act. A lack of knowledge on the part of investigators of the obligation to record a brief of evidence in two sections of the register is resulting in errors that could be easily avoided. It is noted that each PI register contains clear examples for recording brief documents as a 'use' of surveillance device information and once served, as a communication of that information to a person external to Victoria Police.

In relation to the use of PI to obtain further warrants, three out of ten PI registers either failed to make an entry at all, or recorded an entry in the wrong register. Eight of the 10 PI registers failed to record correct communication details relating to surveillance device information included in a warrant application.

The failure to record correct communication detail is concerning. In some cases an entry had been made but communication was to the internal officer (or unit) who received the PI rather than the external person or agency. In other entries it is apparent that knowledge is lacking regarding the different agencies involved in the warrant application process. This is despite PI registers having clear and relevant examples of how to correctly record such information for various types of warrants.

The errors referred to in this section were made by officers using and communicating PI during an investigation or prosecution. They occurred despite the inclusion of clear examples and comprehensive guidelines for recording all types of uses and communication in a PI register. While PI registers inspected did not include examples relating to communication of PI to the PIM, Victoria Police have since the inspection advised the VI that the PIM's role and function have been incorporated into training provided to investigators handling surveillance device material. As the PIM has been in existence for over 12 months and Victoria Police do provide training to investigators, investigators should be aware of the PIMs involvement in the warrant application process. While a low level of human error is always likely to occur in record keeping, the regular occurrence of the specific errors highlighted above is a disappointing result for the agency.

Errors in PI register records can adversely impact compliance with other requirements of the SD Act. For example the completeness and accuracy of reports made pursuant to s. 30K largely relies on accurate PI register records. It is essential that PI register records are made with care and as nearly as possible contemporaneously with the events recorded so those events are still fresh in the mind of the entry maker.

Victoria Police continues to implement new initiatives for the purpose of maintaining and improving compliance with the SD Act. The VI was advised of a new process, implemented toward the end of the 2013 calendar year, which directly relates to improving the recording of uses and communications of

PI. The effectiveness of this initiative should become apparent during the VI's 2014-2015 inspections. It is positive to see that SPU continue to implement new processes aimed at improving compliance.

OTHER COMPLIANCE REQUIREMENTS

Additional 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 and 5 below.

A summary of the level of compliance achieved by Victoria Police is provided within the tables. Where appropriate further explanation or comment follows the tables. No assessment was made for this reporting period of compliance with s. 30H(1)(b) (destruction of PI no longer likely to be required), or s. 30M(g) (keeping a copy of each evidentiary certificate issued under s. 36). Past inspections have shown that these matters are dealt with in a compliant manner using well established systems. These matters will, however, be given particular attention in the 2014-2015 year.

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	56 ³⁰	0
Revocation of retrieval warrants by chief officer. s. 20H(3)	2	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)	58	0
Report to judge or magistrate under s. 30K made on time and includes required information. s. 30K(1)	60	15
Applications to be made only with the approval of a 'senior' or 'authorised' officer. s. 15(2)	75	0

³⁰ This number includes the revocation of 11 out of 13 warrants which were not executed.

Table 5: Further (general) compliance requirements

Other compliance requirements	Compliant Yes/No
Maintain a register of warrants and emergency authorisations with required details. s. 30O	Yes
Records and reports obtained by use of a surveillance device under warrant kept secure from unauthorised persons. s. 30H(1)(a)	Yes
Destruction of records and reports. s. 30H(1)(b)	Not assessed
Annual report to Minister by chief officer of the agency. s. 30L	Yes
A copy of each evidential certificate issued under s. 36. s. 30M(g)	Not assessed
Details of the destruction of records or reports under s. 30H(1)(b). s. 30N(f)	Not assessed

Revocation of surveillance device and retrieval warrants: Sections 20B and 20H

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.³¹

Of the 73 surveillance device warrant files inspected, there were 45 surveillance device warrants executed and subsequently revoked before expiry. Eleven of 13 surveillance device warrants issued but not executed were also revoked. Similarly two retrieval warrants were revoked before they expired. In total 58 out of 75 surveillance device and retrieval warrants were notified to the CCP or an authorised delegate as no longer required and were subsequently revoked. In all instances documentation relating to revocation was easily identifiable on the warrant files. Victoria Police has an excellent level of compliance with these requirements and demonstrate a sound understanding of the importance of discontinuing the use of a device (if the warrant was executed) and revoking the warrant if the grounds for it no longer exist or the use of the device(s) is no longer necessary.

Reporting under section 30K

Pursuant to s. 30K of the SD Act, a report must be made to the issuing judge or magistrate by a date specified in each warrant. The majority of s. 30K reports are produced by SPU registry staff using

information provided by investigators. A report must include information regarding the use and future use of information obtained under a warrant and the benefit to the investigation of the use of the surveillance device(s). For the purpose of accuracy in reporting under s. 30K SPU has introduced new processes prior to preparing the s. 30K report, to ensure they have accurate and up to date information from which to compile the report.

Notwithstanding the effort of SPU staff the VI found a number of errors (including omissions) in s. 30K reports. These most often became evident upon inspection of the relevant PI registers and from talking to investigators about the entries they had made.

A total of 74 s. 30K reports were reviewed as part of the inspection of 75 warrant files and 52 corresponding PI registers. Fifteen errors were detected, the majority being an error in reporting the use made of PI obtained by means of a surveillance device. This means 20% of the reports had a compliance issue. Fourteen errors related to the required content of an s. 30K report and one error concerns the missing s. 30K report copy referred to above in relation to s. 30M.

Errors detected in s. 30K reports are detailed in Table 6 below. Where the error was detected at the field inspection subsequent to the warrant file inspection, the error in the s. 30K report has been attributed to the warrant file inspection in which the s. 30K report was inspected.

Table 6: Reporting Errors - section 30K report to judge or magistrate

	First Inspection	Second Inspection	Third Inspection	Total
Number of warrant files inspected	28	18	29	75
Use error ³²	5	3	4	12
Other error	0	0	3	3

During the third inspection period one warrant file did not contain a copy of the s. 30K report which is a requirement of s. 30M(f). While this is a rare occurrence the lack of a copy of the report on the warrant file meant the VI was unable to establish whether or not that report was made on time and whether or not it contained the required content to comply with s. 30K of the SD Act. The missing report has been included in the data in Table 6 as an 'other error' identified at the third inspection.

Of particular concern is that of 11 reports with an error relating to the use of PI obtained by means of a surveillance device, ten were identified as failing to report uses that were recorded in the associated PI register in entries that pre-dated the s. 30K report.

Other errors identified included:

- reporting a use of PI that was subsequently identified by the VI as not having occurred (two instances)

³² The use error and other error figures are derived from the warrant file inspection and the field inspections.

- reporting a future use that ought not to have been included (one instance - this error had been subsequently identified by Victoria Police prior to the VI inspection)
- mistakes made in reporting the names of persons involved in the execution of the warrant (two instances)

The VI acknowledges that when identifying information from the PI register and comparing it to s. 30K reports it is not always possible to identify with certainty which information is correct and which is wrong. This is usually resolved, however, if the investigator concerned can be spoken to.

Victoria Police is generally compliant overall with s. 30K, however 14 reports were identified as having a compliance failure concerning part of the information reported. Victoria Police (SPU) continues to introduce new initiatives to improve report accuracy. It is the view of the VI, however, that the fundamental problem continues to lie with the accuracy and completeness with which investigators maintain their PI registers and the care with which they subsequently report information to SPU for use in s. 30K reports.

PRACTICE MATTERS

Section 30K reports addressed to judge or magistrate

The VI in its first Surveillance Devices Report for 2013-2014³³ reported on a practice issue regarding s. 30K reports not being addressed to the judge or magistrate who issued the warrant, but rather to the judge's associate or to the court generally. It was pleasing to note in the VI's first report for 2013-2014 that instances of incorrectly addressed reports had decreased and such errors remained relatively low for the second half of the 2013-2014 year. In the first inspection for 2013-2014 year 28 reports were reviewed, with 21 identified as incorrectly addressed. During the second inspection in December 2013, of 18 reports reviewed only one was addressed incorrectly. The third warrant file inspection undertaken in March 2014 identified six of 29 reports as incorrectly addressed. While the error rate increased at the third inspection it is apparent that this matter has been given attention.

SUMMARY

Victoria Police generally demonstrates a high level of compliance with the SD Act. Few errors were detected during warrant file inspections undertaken at SPU and TPU indicating that staff within these registries have a detailed understanding of the requirements of the SD Act. The majority of compliance errors detected are identified during field inspection of PI registers. While the VI anticipates that there will inevitably be a level of human error in records, this report has identified specific error types occurring which impact statutory compliance requirements. Ensuring that PI registers are correct and contain all use and communication records is essential to achieving full compliance with the SD Act. It is difficult to determine why particular errors occur when investigators are provided with training and example

³³ Report No. 1 for 2013-2014, above n 24.

entries and written guidelines are provided within the PI registers. The inspection results raise concerns regarding the level of understanding and diligence investigators may have in relation to keeping accurate records. This contrasts with the high levels of compliance achieved within the SPU and TPU registries.

Accuracy issues within PI registers impact on compliance with other aspects of the SD Act, such as the accuracy of s. 30K reports. Information required for reporting is largely derived from the PI register. SPU staff must rely on the information provided to them by investigators. If this information is inaccurate then the report produced will also be inaccurate.

Victoria Police continues to be receptive to the VI's feedback. In response to the draft surveillance devices report Victoria Police advised that they are continuing to work on the compliance issues identified. The introduction by SPU of initiatives to assist in recording use and communication of information obtained by means of a surveillance device and the accuracy of information flow indicates that Victoria Police wishes to improve compliance. The impact of recently introduced initiatives should become apparent during the 2014-2015 inspection cycle and Victoria Police will be informed of inspections results as the financial year progresses. Overall Victoria Police has demonstrated a high level of compliance with the SD Act notwithstanding that there are specific areas where the compliance level requires improvement.

RECOMMENDATIONS

No formal recommendations were made in the previous report.

The VI does not make any formal recommendations within this report. However, as specific compliance error types are identified in the report, the VI believes it would be beneficial for Victoria Police to consider how to make use of that information when considering any further initiatives in connection with investigator records.

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 ON ALL AGENCIES

As required under the SD Act the next report covering all agencies using the provisions of the SD Act will be made after 1 January 2015.

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

Robin Brett QC
Inspector
Victorian Inspectorate