



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

Report No. 2 for 2016-2017

September 2017

Contents

INTRODUCTION	1
FEATURES OF THE LEGISLATION	2
OBJECTIVES OF THE SD ACT	2
TYPES OF SURVEILLANCE DEVICES	2
WARRANTS AND EMERGENCY AUTHORISATIONS	2
RECORDS, DOCUMENTS AND REPORTS REQUIRED BY THE SD ACT	3
SECURITY AND DESTRUCTION OF INFORMATION OBTAINED	3
PROTECTED INFORMATION REGISTERS	3
THE VICTORIAN INSPECTORATE	4
ROLE OF THE VI	4
THE POWERS OF THE VI UNDER THE SD ACT	4
ASSESSING COMPLIANCE	4
DEPARTMENT OF ENVIRONMENT, LAND, WATER AND PLANNING (DELWP)	5
INSPECTION CONDUCTED	5
INTELLIGENCE AND INVESTIGATIONS UNIT	5
INSPECTION RESULTS	6
RECORDS INSPECTED	6
<i>Warrant File Records</i>	6
<i>Report To Judge Or Magistrate</i>	6
<i>Investigator Records (PI Registers)</i>	6
<i>Register Of Warrants And Emergency Authorisations</i>	6
ANNUAL REPORT TO THE MINISTER	7
RECOMMENDATIONS	7
ACKNOWLEDGEMENT	7
DEPARTMENT OF ECONOMIC DEVELOPMENT, JOBS TRANSPORT AND RESOURCES (DEDJTR)	8
INSPECTIONS CONDUCTED	8
INSPECTIONS RESULTS	8
RECORDS INSPECTED	8
<i>Warrant File Records</i>	9
<i>Register Of Warrants and Emergency Authorisations</i>	9
ANNUAL REPORT TO THE MINISTER	9

RECOMMENDATIONS.....	9
ACKNOWLEDGEMENT	9
GAME MANAGEMENT AUTHORITY (GMA).....	10
INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION (IBAC)	11
INSPECTION RESULTS.....	11
RECORDS INSPECTED	11
<i>Warrant File Records</i>	<i>11</i>
<i>Operational Registers</i>	<i>11</i>
<i>Report To Judge or Magistrate</i>	<i>12</i>
<i>Destruction Of PI.....</i>	<i>12</i>
<i>Register Of Warrants And Emergency Authorisations.....</i>	<i>12</i>
ANNUAL REPORT TO THE MINISTER	12
SUMMARY	12
ACKNOWLEDGEMENT	12
VICTORIA POLICE	13
INSPECTIONS CONDUCTED	13
INSPECTION RESULTS.....	14
RECORDS INSPECTED	14
<i>Discontinuance And Revocation Of Warrants.....</i>	<i>14</i>
<i>Warrant File Records</i>	<i>14</i>
<i>Report To Judge Or Magistrate</i>	<i>15</i>
<i>Keeping Documents Connected With Warrants And Emergency Authorisations</i>	<i>16</i>
<i>Other Records To Be Kept Including Investigator Records (PI Registers) And Destructions.....</i>	<i>16</i>
<i>Register Of Warrants And Emergency Authorisations.....</i>	<i>20</i>
<i>Evidentiary Certificates.....</i>	<i>20</i>
ANNUAL REPORT TO THE MINISTER	20
SUMMARY.....	21
RECOMMENDATIONS.....	21
ACKNOWLEDGEMENT	21
NEXT REPORT.....	21

List of Abbreviations

DEDJTR	Department of Economic Development, Jobs, Transport and Resources
DELWP	Department of Environment, Land, Water and Planning
GMA	Game Management Authority
IIU	Intelligence and Investigations Unit (within DELWP)
IBAC	Independent Broad-based Anti-corruption Commission
PI	Protected information
PI register	Protected information register
PIM	Public Interest Monitor
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)
VFA	Victorian Fisheries Authority
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 Government 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 involvement of the Public Interest Monitor³ in the warrant application process has added another level of scrutiny to the control and oversight regimes.

During the period under review, five state law enforcement agencies⁴ 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)
- Department of Economic Development, Jobs, Transport and Resources (DEDJTR)
- Game Management Authority (GMA)

In accordance with statutory obligations⁵ 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. This report outlines the results of VI inspections conducted on agency records and law enforcement officers for the 2016-2017 reporting period.

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 Law enforcement agency is defined in s 3.

⁵ SD Act s 30Q.

FEATURES OF THE LEGISLATION

OBJECTIVES OF THE SD ACT

The primary purposes of the SD Act⁶ 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
- 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.

TYPES OF SURVEILLANCE DEVICES

The SD Act provides for the use of the following surveillance devices:⁷

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

WARRANTS AND EMERGENCY AUTHORISATIONS

The SD Act provides for the issue of surveillance device warrants⁸ and retrieval warrants⁹ and in a limited range of circumstances for emergency authorisation¹⁰ 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.¹¹

⁶ SD Act s 1.

⁷ Surveillance device is defined in s 3.

⁸ SD Act ss 15 to 20.

⁹ Ibid ss 20C to 20G.

¹⁰ Ibid ss 25 to 30.

¹¹ Ibid 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.¹²

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.¹³ The chief officer of each agency is also required to report annually to the Minister¹⁴ 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 secure¹⁵ and to undertake the destruction of such information¹⁶ when it is unlikely to be required for a permitted purpose.¹⁷

PROTECTED INFORMATION REGISTERS

Although the SD Act gives the term a wider definition,¹⁸ for the purposes 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. The SD Act limits and regulates the use, communication and publication of PI.¹⁹

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.

¹² Ibid ss 30M, 30N and 30O.

¹³ Ibid s 30K.

¹⁴ Ibid s 30L.

¹⁵ Ibid s 30H (1) (a).

¹⁶ Ibid s 30H (1) (b).

¹⁷ Defined in SD Act ss 30F and 30G.

¹⁸ SD Act s 30D.

¹⁹ Ibid s 30E.

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.²⁰ 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.²¹

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 powers²² 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.

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

²⁰ Ibid s 30P (1).

²¹ Ibid s 30Q.

²² Ibid s 30P (2).

DEPARTMENT OF ENVIRONMENT, LAND, WATER AND PLANNING (DELWP)

The VI is obliged under the SD Act to inspect the records of DELWP held by its Intelligence and Investigations Unit (IIU) division from time to time to determine its level of compliance with the SD Act.

This report addresses the results of inspections undertaken by the VI from 1 July 2016 to 30 June 2017. Each inspection included examination of the various documents,²³ records,²⁴ reports,²⁵ registers²⁶ and other relevant material held by the IIU within DELWP. All records relating to all warrants were inspected; there was no sampling of records.

The VI has an established process for inspections at DELWP whereby a warrant file and registers are inspected even if the warrant remains current or reports have not been completed, this is because DELWP makes only occasional use of the provisions of the SD Act.

In 2016-2017 DELWP's warrant files and related investigator records were scheduled to be inspected on a bi-annual basis. Inspections were conducted by VI compliance officers in both November 2016, and May 2017.

INSPECTION CONDUCTED

As in previous years inspections were conducted bi-annually on the records held by DELWP relating to SD warrants that were completed, or commenced and still active during the inspection period.

Inspections were conducted in November 2016 and May 2017.

INTELLIGENCE AND INVESTIGATIONS UNIT

The IIU is the division within DELWP that uses the powers under the SD Act. At the meeting in May 2017 with the officer of IIU, the VI officers were informed about a restructure that has resulted in the rebranding of the area of DELWP that use the powers under the SD Act as of 1 July 2017, the area will become a branch and will no longer be referred to as a unit. They will be rebranded as the Regulation and Compliance Branch.

There will be an increase in the number of officers and an amendment Bill put forward to expand their legislative powers.

²³ Ibid s 30M.

²⁴ Ibid s 30N.

²⁵ Ibid s 30K.

²⁶ Ibid ss 30N and 30O.

INSPECTION RESULTS

RECORDS INSPECTED

WARRANT FILE RECORDS

The inspection of two warrant files was conducted in the first round of inspections for 2016-17 in November 2016. This inspection did not identify any issues of non-compliance. All documents were present on the files and no deficiencies were noted.

The second round of inspections were conducted in May of 2017. Once again, 2 warrants were inspected, one completed during the inspection period, and another that is still ongoing. All documents were present on the files and no deficiencies were noted.

REPORT TO JUDGE OR MAGISTRATE

Section 30K of the SD Act requires the law enforcement officer to whom a 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 section 30K reports for each warrant inspected in November 2015 had been completed on the day of the inspection with the report to the issuing Magistrate to be made shortly thereafter. The inspection was carried out prior to the dates on which the reports were required to be submitted to the issuing Magistrates, and at the time of the inspection the report in to the finalised warrant had not yet been completed. This will be reviewed at the next inspection scheduled in round one of the 2017-2018 year of inspection.

INVESTIGATOR RECORDS (PI REGISTERS)

Sub-sections 30N(c)-(e) require a record to be kept containing the details of each use, communication and giving in evidence of PI obtained by use of a surveillance device. Records had been kept for all warrants inspected.

REGISTER OF WARRANTS AND EMERGENCY AUTHORISATIONS

DELWP maintains a register to meet the requirements of section 30O. This register also incorporates prescribed information required under sub-sections 30N (a) and 30N (b). The register included all required information and no compliance matters were detected at inspection.

ANNUAL REPORT TO THE MINISTER

DWELP is required by section 30L of the SD Act to provide an annual report to the Minister by 30 September 2017. As the time for providing the report has not yet expired, the VI is unable to report on compliance with this section.

RECOMMENDATIONS

No formal recommendations were made in the previous report.

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

ACKNOWLEDGEMENT

The VI acknowledges the full co-operation of DELWP. Particular note is made of the assistance given to the VI by IIU staff that made records available for inspection and assisted VI staff when necessary during the inspection process

DEPARTMENT OF ECONOMIC DEVELOPMENT, JOBS TRANSPORT AND RESOURCES (DEDJTR)

The VI is obliged under the SD Act to inspect the records of DEDJTR held by Fisheries Victoria from time to time for the purpose of determining the level of compliance with the SD Act.

This report addresses the results of inspections undertaken by the VI from 1 July 2016 to 30 June 2017. Each inspection included examination of the various documents,²⁷ records,²⁸ reports,²⁹ registers³⁰ and other relevant material held by Fisheries Victoria. All records relating to all warrants were inspected. ; No sampling of records was undertaken and all records relevant to each warrant were inspected.

The VI has an established process for inspections at DEDJTR in which a warrant file and registers are inspected even if the warrant remains extant or reports have not been completed. This is because DEDJTR makes only occasional use of the provisions of the SD Act.

In the 2016-2017 reporting period warrant files and related investigator records were inspected on a bi-annual basis. Inspections were conducted by VI compliance officers in October 2016, and April 2017.

INSPECTIONS CONDUCTED

During the inspection in April 2017, VI compliance officers were informed that as at 1 July 2017, Fisheries Victoria would become a statutory authority to be known as the Victorian Fisheries Authority (VFA). It is to be led and subject to the governance of an independent board comprised of industry experts. It is understood that the new authority will be responsible for carrying out all the functions currently being undertaken by Fisheries Victoria.

INSPECTIONS RESULTS

RECORDS INSPECTED

In 2016-2017 the VI undertook two inspections of the surveillance device warrant files, associated registers and reports, held by Fisheries Victoria. This report focuses on statutory compliance issues identified in the course of inspections conducted in October 2016 and April 2017.

²⁷ Ibid s 30M.

²⁸ Ibid s 30N.

²⁹ Ibid s 30K.

³⁰ Ibid ss 30N and 30O.

WARRANT FILE RECORDS

In October 2016, VI compliance officers conducted an inspection of the one SD warrant then current. Both at this time and, thereafter, when again inspected in April 2017 (by which time the operation had been completed), the file was found to be compliant. An inspection of records relating to a then ongoing operation, was also undertaken in April 2017 and was assessed as being fully compliant.

REGISTER OF WARRANTS AND EMERGENCY AUTHORISATIONS

Fisheries Victoria maintains a register to capture the information required by s 30(O). In October 2016 VI compliance officers found the records maintained by Fisheries Victoria to be fully compliant with these statutory requirements. Although a subsequent inspection conducted in April 2017 identified some errors, these were considered by VI compliance officers to be minor and in follow up discussions with staff, were quickly corrected.

ANNUAL REPORT TO THE MINISTER

DEDJTR is required by section 30L of the SD Act to provide an annual report to the Minister by 30 September 2017. As the time for providing the report has not yet expired, the VI is unable to report on compliance with this section.

RECOMMENDATIONS

No formal recommendations were made in the previous report.

The VI makes no formal recommendations in this report.

ACKNOWLEDGEMENT

The VI acknowledges the full co-operation of DEDJTR. Particular note is made of the assistance given to the VI by the staff of Fisheries Victoria staff who readily made records available for inspection and who assisted VI compliance officers when necessary during the inspection process

GAME MANAGEMENT AUTHORITY (GMA)

The VI is obliged under the SD Act to inspect the records of the GMA from time to time to determine GMA's level of compliance with the SD Act. The GMA began operations on 1 July 2014 and is yet to use the provisions under the SD Act, and therefore no files were inspected by the VI during the reporting period.

As reported previously, the changes made to the *Wildlife Act* 1975 enacted in 2016, will enable the GMA to conduct operations involving the use of SDs during closed season periods. The GMA informed VI compliance officers that it was hopeful further legislative amendments in the second half of 2017, would enable it to conduct operations involving the use of SD warrants in the open season.

The VI anticipates that at such time as the GMA is placed to utilise the provisions of the SD Act, it will apply the same inspection methodology as that used for DELWP and DEDJTR, which includes examining the various documents,³¹ records,³² reports,³³ registers³⁴ and other relevant material held by GMA on a bi annual basis.

³¹ Ibid s 30M.

³² Ibid s 30N.

³³ Ibid s 30K.

³⁴ Ibid ss 30N and 30O.

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION (IBAC)

The VI is obliged under the SD Act to inspect the records of the IBAC from time to time to determine IBAC's level of compliance with the SD Act.

The first inspection of IBAC records for the 2016-2017 year took place in October 2016 and the second in May 2017. During the October inspection, IBAC officers provided the Inspectorate with a copy of their updated procedures relating to SD warrants. This demonstrates the IBAC's commitment to continuous improvement in regards to its processes. No further updates were made to the procedures at the date of the second inspection in May 2017.

INSPECTION RESULTS

RECORDS INSPECTED

WARRANT FILE RECORDS

Section 30M of the SD Act requires that certain documents connected with warrants and emergency authorisations are kept on the warrant file. The files of one surveillance device warrant that ceased to be in force in the period under review were inspected in October 2016 and a further five warrants relating to two operations in May 2017.

No matters of non-compliance were noted in respect of the warrant files with all documentation required to be kept, being held on file.

One Evidentiary Certificate relating to the SD warrant inspected in October 2016 was also sighted and noted.

OPERATIONAL REGISTERS

The SD Act prescribes the circumstances in which PI can be used, communicated or published³⁵ and particular additional circumstances, in which it is not an offence to use, communicate or publish PI.³⁶ Sub-sections 30N(c)-(e) require the details of each use and communication of PI and each occasion on which PI is given in evidence to be recorded and kept. The IBAC maintains a register for each operation and during this inspection period the registers for all files reviewed contained all required details.

³⁵ Ibid ss 30F(1) and 30G(1).

³⁶ Ibid s 30E(4).

REPORT TO JUDGE OR MAGISTRATE

Section 30K of the SD Act requires the law enforcement officer to whom a 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 the date specified in the warrant. The report must contain certain information, the accuracy of which is important in providing judges and magistrates with an evidential basis against which the value of the use of the surveillance device can be properly assessed.

All reports inspected were assessed as compliant, having been made on time and containing all the information required.

DESTRUCTION OF PI

Inspection of IBAC records concerning the destruction of surveillance device material obtained under three warrants for two operations was undertaken in October 2016 and no matters of non-compliance were identified.

No further destruction of surveillance device material took place during the inspection period.

REGISTER OF WARRANTS AND EMERGENCY AUTHORISATIONS

The register maintained by the IBAC to record the information required by s 30O of the SD Act, was also found to satisfy the requirements of ss 30N (a) and 30N (b).

ANNUAL REPORT TO THE MINISTER

Although the IBAC is required by s 30L of the SD Act to provide an annual report to the Minister by 30 September 2017, it is noted that the time for doing so had not expired as at the date of this report.

SUMMARY

The IBAC has shown a clear understanding of its obligations under the SD Act and maintains a very good process for managing surveillance device warrants files and operational registers. That no errors were detected in the warrant files or section 30K reports, highlights the effectiveness of the continuous improvement processes that the IBAC has established.

ACKNOWLEDGEMENT

The VI acknowledges the cooperation of the IBAC Commissioner and, in particular, the staff within the Legal Compliance Unit who made the required records available to the VI compliance officers and who readily responded to requests for any further information.

VICTORIA POLICE

Pursuant to the provisions of the SD Act, the VI is required, from time to time, to inspect the records of Victoria Police for the purpose of assessing the level of statutory compliance.

This report includes the results of inspections undertaken by the VI from 1 July 2016 to 30 June 2017. Each inspection included examination of the various documents,³⁷ records,³⁸ reports,³⁹ registers⁴⁰ and other relevant material held by Victoria Police. With one exception, all records relating to every warrant were inspected, the exception being the first round of inspections when only a sample of evidentiary certificates were examined. All evidentiary certificates were examined in the second round.

The VI has an established process in which a warrant file relating to Victoria Police is not inspected until reporting requirements under s 30K of the SD Act for that warrant have been completed. This practice obviates the need for VI officers to return to warrant files on multiple occasions and enables a more informed assessment to be made of the level of statutory compliance achieved in respect of each warrant. That this process differs from that applied to DELWP, DEDJTR and GMA records, where the warrant file is inspected even if the file is not yet completed, is because those agencies make only occasional use of the provisions of the SD Act.

During 2016-2017, VI compliance officers twice attended Victoria Police and on each occasion inspected all relevant warrant files and related investigator records.

INSPECTIONS CONDUCTED

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

During the reporting period, the VI undertook two inspections of Victoria Police surveillance device warrant files at SPU and TPU and two field inspections of PI Registers. Related documentation held by the Technical Support Unit (TSU) were also inspected. This report deals with statutory compliance issues identified during the inspections conducted during both rounds of warrant file inspections conducted in 2016-2017.

³⁷ Ibid s 30M.

³⁸ Ibid s 30N.

³⁹ Ibid s 30K.

⁴⁰ Ibid ss 30N and 30O.

INSPECTION RESULTS

RECORDS INSPECTED

This report deals with the level of statutory compliance achieved identified during the warrant file inspections conducted by VI compliance officers in September 2016 and March 2017 and the PI Register inspections conducted in October/November/December 2016 and April/May 2017.

DISCONTINUANCE AND REVOCATION OF WARRANTS

In circumstances in which the grounds for a surveillance device or retrieval warrant no longer exist or the use of a device is no longer necessary, the Chief Commissioner of Police (CCP) must be informed immediately and the warrant revoked.

VI compliance officers reported that of the 60 surveillance device warrants executed, 48 were discontinued and revoked by the chief officer's delegate before the expiry of the warrant. A further seven warrants were not executed, six of which were also revoked by the chief officer.

That Victoria Police continues to demonstrate a sound understanding of the SD Act requirements is supported by the high level of statutory compliance achieved, particularly in relation to the frequent discontinuance of executed warrants and the revocation of warrants when the grounds for issuance are determined to no longer exist.

WARRANT FILE RECORDS

A total of 59 warrant files were inspected during the 2016-2017 year. This is the number of warrants which ceased to be in force during the 2016 calendar year across SPU and TPU and which, therefore, were due for inspection. It is noted that although TPU presented additional warrants for inspection, these fell outside the reporting under review and, therefore, have not been included in this report. The inspection results of those records will be reported in Report No 1 for 2017-2018. Of the 57 warrants inspected, all were surveillance device warrants (i.e. there being no remote applications, retrieval warrants or s 26 emergency authorisations).

Following their inspection of those surveillance device warrant files which had ceased to be in force in the period under review, VI compliance officers assessed Victoria Police as having been fully compliant with the statutory requirements.

REPORT TO JUDGE OR MAGISTRATE

Section 30K of the SD Act 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 the date specified in the warrant.⁴¹ The report must contain certain information, the accuracy of which provides an evidential basis against which the value of the use of the surveillance device can be properly assessed.

Having inspected 59 s 30K reports during the period under review, VI compliance officers found two were deficient because of a failure to include all the required information. In this regard, the following issues were identified during the round one inspection

- In respect of both reports, VI compliance officers found that the original s 30K report to the judge did not include details of the use made of the surveillance device and that.
 - in one case this had been detected prior to the VI inspection and the error subsequently rectified by the delivery of an amended report to the judge; and
 - In respect to the other report, the error had been rectified by providing the judge with an amended report after the VI inspection had concluded.

VI compliance officers previously reported that in circumstances in which an error is identified in the original s 30K report, Victoria Police had implemented a practice in which an amended report was prepared and given to the issuing judge or magistrate.

The error rate of just over 3% in the period under review, demonstrates a significant decline in the error rate when compared with the 2015-2016 rate (where nine of 62 reports were found to contain errors, representing, an error rate of a little over 14%). That Victoria Police has established an effective monitoring process in reporting and regulatory record keeping, is well reflected in the decreased percentage of errors. Complementing this is the preparedness of Victoria Police to not only engage with VI compliance officers, but to receive and act upon constructive feedback.

⁴¹ There is no corresponding reporting requirement for emergency authorisations.

KEEPING DOCUMENTS CONNECTED WITH WARRANTS AND EMERGENCY AUTHORISATIONS

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

Table 1 below is a summary of the compliance level achieved by Victoria Police in maintaining warrant documentation. As is readily apparent, the recorded results confirm that Victoria Police was fully compliant.

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)	59	0
Each notice of revocation by a judge or magistrate under s 20A(3) s 30M(b)	45	0
Each emergency authorisation s 30M(c)	0	0
Each application for emergency authorisation s 30M(d)	0	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)	59	0
A copy of each report to a judge or magistrate under s 30K s 30M(f)	59	0

OTHER RECORDS TO BE KEPT INCLUDING INVESTIGATOR RECORDS (PI REGISTERS) AND DESTRUCTIONS

In addition to the requirements under Section 30M, Section 30N of the SD Act provides that the CCP must cause certain other records relevant to surveillance devices be kept by Victoria Police, including a statement as to:

- Whether the application for a warrant, or extension, variation or revocation was granted, refused or withdrawn (s 30N(a));
- Whether the application for an emergency authorisation, or for approval of powers exercised under an emergency authorisation, was granted, refused or withdrawn (s 30N(b)).

The SD Act sets out the circumstances in which PI can be used, communicated or published⁴² and particular circumstances, in which it is not an offence to use, communicate or publish PI.⁴³ The details of each use and communication of PI and each occasion PI is given in evidence must be recorded and kept by Victoria Police pursuant to ss 30N(c)-(e).

Victoria Police issues a PI register to an investigator once a warrant has been executed. VI compliance officers inspect these registers to ensure records were made pursuant to ss 30N(c)-(d). If any errors (including omissions) are detected, Victoria Police is informed and provided with the relevant details. The VI considers an 'error' to be:

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

A summary of the level of compliance achieved by Victoria Police with s 30N, is set out in the following Tables (2(a) and 2(b)).

The data in Table 2(a) was that obtained during the course of inspecting 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 whether each application for a warrant, extension, variation or revocation was granted, refused or withdrawn s 30N(a)	57	0
Statement 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)	0	0

⁴² Ibid ss 30F(1) and 30G(1).

⁴³ Ibid s 30E(4).

The data presented in Table 2(b) relating to use, communication and the giving in evidence of PI⁴⁴ has been drawn from the 55 PI registers inspected and cross-checked with any relevant information contained in the corresponding warrant files.

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)	55	2
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)	56	1
Details of each communication to a person other than a law enforcement officer of the agency which was given in evidence in a relevant proceeding s 30N(e)	7	0

Field inspections were conducted in October/November/December 2016 and May 2017. A total of 57 PI registers were inspected during the reporting period, with VI compliance officers inspecting PI registers at 10 Police units during the first field inspection and none during the second. There was no 'in-the-field' inspection of registers in round 2. This was either because:

- the register had been returned to SPU by the investigators,
- the files were electronic and could be inspected at SPU, or
- there were practical considerations that made a field trip inappropriate - these registers were electronically inspected (remotely) at the VI office.

The number of PI registers inspected by the VI in 2016-2017 bears no correlation to 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 not 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 when, for example, substantial new records are likely to be made following a first inspection, or if errors in the register were previously detected.

⁴⁴ As required to be recorded by s 30N(c)-(e) of the SD Act.

Of the 57 registers inspected during the period under review, 6 were PI Registers which had been inspected previously and found to contain errors. Although the purpose of the reinspection was primarily to check that the errors had been rectified, any subsequent entries were also inspected. Compliance issues identified during warrant file and PI Register inspections are reported in table 3 below.

Table 3: PI Register inspection results

New PI registers inspected	51
PI registers reinspected due to previous errors during the inspection period	6
Total number of PI registers inspected	57
Number of PI registers containing an error during the inspection period	3

Table 3 shows that of the 51 PI registers inspected during the 2016-17 period, 3 new errors were identified in round one:

- 2 errors related to registers that failed to record a use of LII
- 1 error related to a register that failed to record a communication of LII to parties external to the Victoria Police.

Each of the registers reinspected (because of previous errors) were found to have been fully rectified and no further issues were identified.

A summary of the number of registers inspected and reinspected and the results recorded during the period under review is reproduced in Table 4 below:

Table 4: Investigator Record-keeping Errors

	Inspection Round 1	Inspection Round 2	Total
Number Registers inspected for the first time	29	22	51
Registers where entries required	24	18	42
Registers with one or more errors	3	0	3
Number Registers reinspected because of previous errors	3	3	6
Registers where errors were amended	3	3	6
Registers where new entries required	3	3	6
Registers with one or more errors	3	0	3

That Victoria Police continues to focus on the importance of statutory compliance and the accurate recording of the use and communication of PI, is reflected in the implementation of effective processes including liaison with investigators, the product of which has been a significant reduction in the number of non-compliant matters.

Section 30N(f) of the SD Act requires that records relating to the destruction of records or reports obtained by the use of surveillance devices must be kept. VI compliance officers inspected destruction related documentation at SPU, TPU and TSU. During the period under review, the total number of destructions inspected across the three units totalled 35. No compliance issues were identified.

REGISTER OF WARRANTS AND EMERGENCY AUTHORISATIONS

The register maintained by Victoria Police to record the information required by s 30O of the SD Act also incorporates that required pursuant to ss 30N (a) and 30N (b). The register was found to be well maintained and to contain all of the information required. While very minor errors (7 in total) were identified (such as a date discrepancy), these were not considered significant. Given the volume of information that Victoria Police must record, the VI readily acknowledges the probability that some level of human error will occur. Following the inspection, these matters were discussed with Victoria Police and VI compliance officers were satisfied that relevant personnel clearly understood their compliance obligations.

EVIDENTIARY CERTIFICATES

Section 36 of the SD Act provides that a senior officer of a law enforcement agency may issue an evidentiary certificate.

Evidentiary certificates were inspected twice during the period under review (September 2016 and March 2017). A sample of certificates were sighted in round one, while all such certificates were seen in round two.

All warrant files recorded by Victoria Police as having had certificates served, included a copy of the evidentiary certificate on file. In this regard, VI compliance officers were satisfied Victoria Police had a well-established process for recording and keeping these certificates.

ANNUAL REPORT TO THE MINISTER

Section 30L of the SD Act requires Victoria Police to provide an annual report to the Minister by 30 September 2017 which time, as at the date of this report, was still running.

SUMMARY

Both inspections conducted during the 2016-2017 period demonstrated that Victoria Police had well-established processes for dealing with the administration of warrant files. That the VI is able to report no matters of any particular concern were found, only serves to underscore and support this finding.

The increased focus on PI register compliance is also demonstrated by the fact that during the second round of inspections, VI compliance officers did not find any errors.

In summarising the inspection results during the period under review, the VI is pleased to report that Victoria Police demonstrated a very good level of compliance with the SD Act. That this is reflected in a continued decline in the error rate, highlights the effective administration processes in place and a well-defined understanding by Victoria Police personnel of their obligations under the governing legislation.

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 relevant Victoria Police personnel. Particular note is made of the ready assistance given to the VI by SPU, the TPU registry and TSU staff. The cooperation of each Unit in arranging and facilitating the production of all records requested, together with the constructive responses received to questions asked, was very much appreciated by the VI and, in particular, VI compliance officers.

NEXT REPORT

As required under the SD Act the next report on all agencies on their use of the provisions of the SD Act will be made after 1 January 2018.



Robin Brett QC
Inspector
Victorian Inspectorate