

**VICTORIAN
INSPECTORATE**

Inspection Report:

Surveillance Devices Act 1999 (Vic)

Report by the Victorian Inspectorate on surveillance device records inspected during the period 1 July 2021 to 31 December 2021

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Overview

This report presents the results of the inspections conducted by the Victorian Inspectorate (the VI) from 1 July to 31 December 2021 of records belonging to the following five Victorian agencies authorised to use surveillance devices:

- Department of Environment, Land, Water and Planning (DELWP)
- Game Management Authority (GMA)
- Independent Broad-based Anti-corruption Commission (IBAC)
- Victorian Fisheries Authority (VFA)
- Victoria Police

The *Surveillance Devices Act 1999* (Vic) (the SD Act) provides the legislative framework for these agencies to use surveillance devices to investigate, or obtain evidence of the commission of, an offence that has been, is being, is about to be, or is likely to be, committed. Law enforcement officers of these agencies can apply to the Supreme Court for a surveillance device warrant with respect to the following types of devices: data; listening; optical; and tracking. For tracking devices only, an application may also be made to the Magistrates' Court. Victoria's Public Interest Monitor (PIM) is entitled to make submissions on warrant applications. In addition to court-issued warrants, senior officers of Victoria Police and IBAC can, in certain emergency situations, authorise the use of surveillance devices.

The role of the VI is established by the SD Act, and it ensures independent oversight of the above agencies with respect to compliance with the SD Act. The VI is required to inspect from time to time the records of each agency and report on the results of its inspections at six-monthly intervals to each House of Parliament as well as the Attorney-General. The use of surveillance devices by Victorian government agencies is highly intrusive, and therefore the VI's role is designed to assure the public that the lawfulness of agency actions is subject to independent checks.

This report gives the inspection results for warrants that ceased in the six-month period ending 30 June 2021, as well as destruction activity undertaken and evidentiary certificates issued during the same period. The VI inspected 100% of the records made available at the inspections.

The VI notes in this report the cooperative and transparent engagement by the officers of each agency whose records were subject to our inspection. While the VI reports on some errors, no significant compliance issues were identified. The VI commends the remedial actions taken by the relevant agencies to address the identified errors.

The VI has not made any recommendations as a result of its inspections of surveillance device records for the 1 July to 31 December 2021 reporting period.

Introduction

The SD Act imposes strict controls on the use of surveillance devices by Victorian law enforcement agencies, including the use and communication of information obtained by the use of such devices, and sets out reporting obligations. It also imposes requirements for the secure storage and destruction of records or reports containing information obtained by the use of surveillance devices.

OUR ROLE

The VI performs an independent oversight function to determine the extent of compliance achieved by law enforcement agencies that have exercised their powers under the SD Act.

The VI is required to inspect the records of these agencies from time to time to determine the extent of compliance with the SD Act. In order to fulfil our requirement to report to Parliament at six-monthly intervals, the VI conducts biannual inspections of:

- surveillance device warrants;
- emergency authorisations; and
- retrieval warrants;

which ceased during the preceding 6-month period.

HOW WE ASSESS COMPLIANCE

The VI inspects hard-copy documents and electronic registers with the primary purpose of ensuring that records connected with the issue of surveillance device warrants, and other records connected with the use of devices, are being properly kept. The VI will also confirm that each law enforcement agency has met its prescribed reporting obligations. We assess compliance based on the records made available to us at the time of inspection, our discussions with the relevant agencies, as well as the action they take in response to any issues we have raised.

In this report, we also assess compliance with the reporting requirements of section 30L of the SD Act. Each agency able to make applications to use a surveillance device is required to make an annual report to the responsible Minister (Attorney-General) that is also tabled in Parliament. The VI assesses these reports against various criteria, including the requirement they be submitted to the Attorney-General by 30 September each year.

HOW WE REPORT ON COMPLIANCE

To ensure procedural fairness, each agency is given an opportunity to comment on the VI's findings from our inspections and to furnish additional records that might assist our assessment. Following this process, the inspection results are considered finalised.

The report provides detail where there is a finding of non-compliance. The VI may, at its discretion, not report on administrative issues (such as typographical or transposition errors) or instances of non-compliance where the consequences are negligible.

The following sections of this report provide the results of the VI's inspection of surveillance records from 1 July to 31 December 2021. Inspection results are reported on separately for each Victorian law enforcement agency with the authority to exercise powers under the SD Act.

Department of Environment Land Water and Planning

DELWP's Major Operations and Investigations Unit administers surveillance device warrants issued to the agency.

Since DELWP made no application for a surveillance device warrant during the period covered by this report (1 January to 30 June 2021), the VI did not inspect any DELWP records on this occasion.

In this report, the VI's assessment of DELWP's extent of compliance is limited to whether the reporting requirements of section 30L of the SD Act were met, including whether it was submitted to the Attorney-General by 30 September 2021. While the VI found that the annual report made by the Secretary for the 2020-2021 financial year met all reporting criteria, it was made late—on 12 October 2021.

The VI acknowledges DELWP's delay in making this report was the result of a staff change and it has since communicated this reporting requirement more widely within the agency. The VI expects no future recurrence of this failure to meet the statutory reporting timeframe.

Game Management Authority

The GMA has yet to make an application under the SD Act, and as a result no files were inspected by the VI for the period.

The VI found the GMA made an annual report for the 2020-2021 financial year under section 30L of the SD Act that met all reporting criteria and was submitted to the Attorney-General by 30 September 2021.

Independent Broad-based Anti-corruption Commission

IBAC's Legal Compliance Unit administers surveillance device warrants issued to IBAC. The VI inspected 12 surveillance device files at IBAC on 27 October 2021, this being all relevant records associated with warrants that ceased between 1 January and 30 June 2021.

FINDINGS - WARRANTS

Were applications for warrants (including extensions and variations) properly made?

The VI found that the six applications made for a surveillance device warrant by IBAC complied with the requirements of section 15 of the SD Act.

Specifically, the VI found the following requirements were met:

- approval was provided by a senior officer;
- the applicant was a law enforcement officer;
- the applicant's name as well as the nature and duration of the warrant were specified, including the type of device sought;
- a sworn affidavit was provided in support; and
- the application was made to a Supreme Court judge or magistrate, as appropriate.

IBAC also met these requirements in respect of six applications to extend a warrant. Each application was made to a judge in accordance with section 20 of the SD Act.

Were warrants, including retrieval warrants, and emergency authorisations in the proper form, and were revocations properly made?

Issued warrants must specify the following matters in accordance with section 18 of the SD Act:

- the name of the applicant and alleged offence;
- the date the warrant was issued, and the kind of surveillance device authorised;
- the premises, object or class of object, or the name of the person (if known) in respect of which the device will be used (as applicable);
- the duration of the warrant (not more than 90 days);
- the name of the law enforcement officer primarily responsible for executing the warrant;
- any conditions for the installation or use of the device;
- when the report under section 30K of the SD Act must be made; and
- the name and signature of the issuing authority (magistrate or judge).

All issued surveillance device warrants met these requirements.

IBAC did not make an application for a retrieval warrant or an emergency authorisation for the use of a surveillance device.

For the inspected warrants, IBAC discontinued the use of a surveillance device and subsequently revoked the associated warrant via a written instrument signed by a delegate of the IBAC Commissioner, in accordance with sections 20A and 20B of the SD Act.

FINDINGS - RECORDS

Did IBAC keep all records connected with warrants and emergency authorisations?

IBAC is required to keep records connected with surveillance device warrants in accordance with section 30M of the SD Act, including:

- each warrant issued;
- each notice given under section 20A(3) for the revocation of a warrant;
- each emergency authorisation and application made for such;
- a copy of each warrant application and any application for its extension, variation or revocation;
- a copy of each application for approval to exercise powers under an emergency authorisation;
- a copy of each report made under section 30K of the SD Act to a magistrate or judge; and
- a copy of each evidentiary certificate issued under section 36 of the SD Act.

IBAC complied with these record-keeping requirements, noting no application was made for an emergency authorisation nor any evidentiary certificate issued during the period.

Did IBAC keep all other necessary records?

IBAC is also required to keep other records in accordance with section 30N of the SD Act, including details of:

- each use made of information obtained by the use of a surveillance device;
- each communication of information obtained by the use of a surveillance device to a person other than an IBAC law enforcement officer;
- each occasion information obtained by the use of a surveillance device was given in evidence in a relevant proceeding; and
- the destruction of records or reports obtained by the use of surveillance devices.

The VI found that IBAC complied with these requirements, noting no records or reports were destroyed during the period.

Section 30H(1)(b) of the SD Act requires the IBAC Commissioner to authorise the destruction of information obtained by the use of surveillance devices when it is no longer required.

The VI has previously reported that IBAC changed its approval procedure for destroying records or reports obtained by the use of a surveillance device. IBAC informed the VI it had decided this approval could be acquitted by the Team Leader in the Compliance Unit, rather than the IBAC Commissioner, since this activity is of a reasonably routine administrative nature. Under this implied agency, authorisation to destroy information is made for and on behalf of the IBAC Commissioner.

To ensure the requirements of the SD Act are being satisfied, the VI sought additional information from IBAC, including whether it had considered its ability under section 32(3) of the IBAC Act to delegate this function. In July 2021, IBAC informed the VI it had determined it does have the power to make a delegation and decided to delegate the power to destroy such records to avoid any doubt about the applicability of the principle of implied agency. The VI inspected a delegation instrument made by the IBAC Commissioner in August 2021 that allows certain IBAC Officers including Team Leader, Compliance, to cause any record or report obtained by a surveillance device to be destroyed.

Did IBAC maintain an accurate register of warrants and emergency authorisations?

The VI found that IBAC kept a register of warrants, as required by section 300 of the SD Act.

The register specified, with respect to each warrant file inspected, the following particulars:

- the date the warrant was issued;
- the name of the magistrate or judge who issued the warrant, as well as the name of the law enforcement officer primarily responsible for its execution;
- the offence in relation to which the warrant was issued;
- the period during which the warrant was in force; and
- any variation or extension of the warrant.

Since IBAC did not exercise its emergency authorisation powers during the relevant period, there were no matters to be specified in the register in relation to section 300(3) of the SD Act.

FINDINGS - REPORTS

Were reports to the magistrate or judge properly made?

Under section 30K of the SD Act, IBAC is required within the time specified in the warrant to make a report to the magistrate or judge who issued the surveillance device warrant. These reports must state whether the warrant was executed and, if it was, give the following details for its use:

- the name of each person involved in the execution of the warrant;
- the kind of surveillance device used;
- the period the device was used;
- the name of any person whose activities or conversations were captured by use of the device or whose geographic location was determined by the use of a tracking device, if known;
- the premises at which the device was installed or the location of its use, as applicable;

- the object in or on which the device was installed or the premises at which the object was located when the device was installed, as applicable;
- the benefit to the investigation of the use of the device as well as the general use made or to be made of the information derived from its use;
- compliance with any warrant conditions, as applicable;
- if the warrant was extended or varied, the number of such occurrences and the reasons for them; and
- if the warrant was revoked by the chief officer under section 20A(2) of the SD Act, the reasons the device was no longer required and whether the PIM was notified of the revocation.

The six reports made by IBAC for warrants that ceased between 1 January and 30 June 2021 were made within the requisite timeframe and complied with these requirements.

Was the annual report to the Minister properly made?

The VI found that IBAC was compliant with the reporting requirements of section 30L of the SD Act. The annual report made by the Commissioner for the 2020-2021 financial year met all reporting criteria and was submitted to the Attorney-General by 30 September 2021.

FINDINGS - TRANSPARENCY AND COOPERATION

The VI considers an agency's transparency, its cooperation during inspection, and its responsiveness to suggestions and issues to be a measure of its compliance culture.

Did IBAC self-disclose compliance issues?

IBAC did not make any self-disclosures relevant to the warrant files inspected from 1 July to 31 December 2021.

The VI previously reported that IBAC self-disclosed three instances where an assistance order made under section 22 of the SD Act was approved by a judge but was not in the proper form—that is, not endorsed on the face of the relevant surveillance device warrant in accordance with section 22(4)(a) of the SD Act. IBAC subsequently advised that it would amend its surveillance device warrant procedures to ensure any future assistance order will be made in the correct form. Since no procedural updates were made prior to our inspection, the VI will inspect this change at its next scheduled inspection of IBAC records.

Were issues identified at previous inspections addressed?

There were no historical issues to be addressed on this occasion as no issues with IBAC files were identified during the VI's previous inspection of surveillance device records.

OFFICIAL

IBAC was responsive and transparent during the inspection process. In our last inspection report, the VI reported that in response to our feedback IBAC had agreed to:

- amend its section 30K report template to include the relevant warrant reference number;
and
- include the particular warrant number in emails sent to the Court for transmitting these reports.

The VI confirmed during its inspection that these changes have been made by IBAC to make it clear which warrant is the subject of each email and report.

Victorian Fisheries Authority

The VI inspected one surveillance device file at the VFA on 17 November 2021, which was the only relevant record associated with warrants that ceased between 1 January and 30 June 2021.

FINDINGS - WARRANTS

Were applications for warrants (including extensions and variations) properly made?

The VI found that the application made by the VFA for a surveillance device warrant complied with the requirements of section 15 of the SD Act.

Specifically, the VI found the following requirements were met:

- approval was provided by a senior officer;
- the applicant was a law enforcement officer;
- the applicant's name as well as the nature and duration of the warrant were specified, including the type of device sought;
- a sworn affidavit was provided in support; and
- the application was made to a Supreme Court judge or magistrate, as appropriate.

The VFA did not apply to extend or vary a warrant under section 20 of the SD Act during the period.

Were warrants, including retrieval warrants, in the proper form and revocations properly made?

Issued warrants must specify the following matters in accordance with section 18 of the SD Act:

- the name of the applicant and alleged offence;
- the date the warrant was issued, and the kind of surveillance device authorised;
- the premises, object or class of object, or the name of the person (if known) in respect of which the device will be used (as applicable);
- the duration of the warrant (not more than 90 days);
- the name of the law enforcement officer primarily responsible for executing the warrant;
- any conditions for the installation or use of the device;
- when the report under section 30K of the SD Act must be made; and
- the name and signature of the issuing authority (magistrate or judge).

The one warrant issued to the VFA met all of these requirements.

The VFA did not apply for a retrieval warrant during the period.

For the inspected warrant, the VFA discontinued the use of a surveillance device and subsequently revoked the associated warrant via a written instrument signed by the CEO, in accordance with sections 20A and 20B of the SD Act.

FINDINGS - RECORDS

Did the VFA keep all records connected with warrants?

The VFA is required to keep records connected with surveillance device warrants in accordance with section 30M of the SD Act, including:

- each warrant issued;
- each notice given under section 20A(3) for the revocation of a warrant;
- a copy of each warrant application, and any application for its extension, variation or revocation;
- a copy of each report made under section 30K of the SD Act to a magistrate or judge; and
- a copy of each evidentiary certificate issued under section 36 of the SD Act.

The VFA complied with these record-keeping requirements, noting no evidentiary certificates were issued during the period.

Did the VFA keep all other necessary records?

The VFA is also required to keep other records in accordance with section 30N of the SD Act, including details of:

- each use made of information obtained by the use of a surveillance device;
- each communication of information obtained by the use of a surveillance device to a person other than a law enforcement officer of the VFA;
- each occasion information obtained by the use of a surveillance device was given in evidence in a relevant proceeding; and
- the destruction of records or reports obtained by the use of surveillance devices.

The VI identified an error in the information recorded in the VFA's use and communications register with respect to the use made of information obtained by a surveillance device. The VFA confirmed the information it had reported to the judge under section 30K of the SD Act was correct, but the register incorrectly omitted two applications for search warrants as a use of information obtained. In this case, the information was used to inform the decision to seek the further warrants, but the applications themselves did not include any information actually obtained as a result of the original warrant. In response to our post-inspection feedback, the VFA notified it has since corrected its register to reference the search warrants. The VI will re-inspect this warrant file at the next scheduled inspection. No records or reports were destroyed by the VFA during the period.

Did the VFA maintain an accurate register of warrants?

The VI found that the VFA kept a register of warrants, as required by section 30O of the SD Act.

The register specified, with respect to the warrant file inspected, the following particulars:

- the date the warrant was issued;

- the name of magistrate or judge who issued the warrant, as well as the name of the law enforcement officer primarily responsible for its execution;
- the offence in relation to which the warrant was issued;
- the period during which the warrant was in force; and
- any variation or extension of the warrant.

FINDINGS - REPORTS

Were reports to the magistrate or judge properly made?

Under section 30K of the SD Act, the VFA is required within the time specified in the warrant to make a report to the magistrate or judge who issued the surveillance device warrant. These reports must state whether the warrant was executed and, if it was, to give the following details for its use:

- the name of each person involved in the execution of the warrant;
- the kind of surveillance device used;
- the period the device was used;
- the name of any person whose activities or conversations were captured by use of the device or whose geographic location was determined by the use of a tracking device, if known;
- the premises where the device was installed or the location for its use, as applicable;
- the object in or on which the device was installed or the premises at which the object was located when the device was installed, as applicable;
- the benefit to the investigation of the use of the device as well as the general use made or to be made of the information derived from its use;
- compliance with any warrant conditions, as applicable;
- if the warrant was extended or varied, the number of such occurrences and the reasons for them; and
- if the warrant was revoked by the chief officer under section 20A(2), the reasons the device was no longer required and whether the PIM was notified of the revocation.

The one report made by the VFA for warrants that ceased between 1 January and 30 June 2021 was made within the requisite timeframe and complied with these requirements.

Was the annual report to the Minister properly made?

The VI found the VFA was compliant with the reporting requirements of section 30L of the SD Act. The annual report made by the CEO for the 2020-2021 financial year met all reporting criteria and was submitted to the Attorney-General by 30 September 2021.

FINDINGS - TRANSPARENCY AND COOPERATION

The VI considers an agency's transparency, its cooperation during inspection, and its responsiveness to suggestions and issues to be a measure of its compliance culture.

Did the VFA self-disclose compliance issues?

The VFA did not make any self-disclosures relevant to the warrant file inspected between 1 July to 31 December 2021. The VI reviewed draft procedural documents including work instructions that relate to administering surveillance device warrants. The VI commends the VFA for its work to develop formal written procedures, and we look forward to reviewing further updates at the next scheduled inspection.

Were issues identified at previous inspections addressed?

The VI notes that the VFA was responsive and transparent during the inspection process. The VI partially re-inspected two warrant files from the previous inspection of records at the VFA. It was confirmed that a supplementary section 30K report was made for each warrant to give corrected information, including a date connected to the use of a device and in one case the operatives involved in the execution of the warrant.

Victoria Police

There are two units within Victoria Police that administer surveillance device warrants and emergency authorisations:

- Special Projects Unit (SPU), the major user of surveillance device warrants; and
- Technical Projects Unit (TPU), within Professional Standards Command.

In addition, the Technical Surveillance Unit (TSU) within Victoria Police is responsible for the installation, maintenance and retrieval of surveillance devices under the authority of warrants or emergency authorisations. Records held by the TSU in relation to these matters are inspected annually and cross-checked against records held by the SPU and TPU. The TSU's records were not inspected during the period covered by this report.

The VI inspected all surveillance device files made available for inspection by Victoria Police's SPU and TPU during the 1 July to 31 December 2021 period. In total, 42 warrant files were inspected. This included seven warrants that were extended and one that was varied, one retrieval warrant and an emergency authorisation.

Two surveillance device files at the TPU were inspected on 8 September 2021, and 40 files at the SPU were inspected from 9-11 November 2021.

FINDINGS - WARRANTS

Were applications for warrants (including extensions and variations) properly made?

The VI found that all applications made for a surveillance device warrant complied with the requirements of section 15 of the SD Act.

Specifically, the VI found the following requirements were met:

- approval was provided by an authorised police officer;
- the applicant was a law enforcement officer;
- the applicant's name as well as the nature and duration of the warrant were specified, including the type of device sought;
- a sworn affidavit was provided in support; and
- the application was made to a Supreme Court judge or magistrate, as appropriate.

In addition to meeting these requirements, Victoria Police made a total of eight applications to extend or vary a warrant – each was made to the relevant judge as required by section 20 of the SD Act.

Were warrants, including retrieval warrants, and emergency authorisations in the proper form and revocations properly made?

Issued warrants must specify the following matters in accordance with section 18 of the SD Act:

- the name of the applicant and alleged offence;
- the date the warrant was issued, and the kind of surveillance device authorised;
- the premises, object or class of object, or the name of the person (if known) in respect of which the device will be used (as applicable);
- the duration of the warrant (not more than 90 days);
- the name of the law enforcement officer primarily responsible for executing the warrant;
- any conditions for the installation or use of the device;
- when the report under section 30K of the SD Act must be made; and
- the name and signature of the issuing authority (magistrate or judge).

The 33 warrants issued to Victoria Police complied with these requirements.

The one issued retrieval warrant complied with section 20F of the SD Act by specifying the following:

- the name of the applicant and the date the warrant was issued;
- the kind of surveillance device authorised for retrieval and the premises or object from which it is to be retrieved;
- the duration of the warrant (not more than 90 days);
- the name of the law enforcement officer primarily responsible for executing the warrant;
- any conditions for entry of premises;
- when the report under section 30K of the SD Act must be made; and
- the name and signature of the issuing authority (magistrate or judge).

One emergency authorisation was given by a senior officer at Victoria Police. The application for approval of the exercise of powers under the emergency authorisation was made to a Supreme Court judge within two business days and was supported by a sworn affidavit. It specified the following in accordance with section 28 of the SD Act:

- the name of the applicant; and
- the kind of surveillance device to be approved.

For the inspected warrants, Victoria Police discontinued the use of surveillance devices and subsequently revoked the associated warrants on 23 occasions via written instruments signed by a delegate of the Chief Commissioner of Police, in accordance with sections 20A and 20B of the SD Act.

FINDINGS - RECORDS

Did Victoria Police keep all records connected with warrants and emergency authorisations?

Victoria Police is required to keep records connected with surveillance device warrants in accordance with section 30M of the SD Act, including:

- each warrant issued;
- each notice given under section 20A(3) for the revocation of a warrant;
- each emergency authorisation, and the application made for such;
- a copy of each warrant application, and any application for its extension, variation or revocation;
- a copy of each application for approval to exercise powers under an emergency authorisation;
- a copy of each report made under section 30K of the SD Act to a magistrate or judge; and
- a copy of each evidentiary certificate issued under section 36 of the SD Act.

Victoria Police complied with these record-keeping requirements. A total of nine evidentiary certificates were inspected for the period.

Did Victoria Police keep all other necessary records?

Victoria Police is also required to keep other records in accordance with section 30N of the SD Act, including details of:

- each use made of information obtained by the use of a surveillance device;
- each communication of information obtained by the use of a surveillance device to a person other than a Victoria Police law enforcement officer;
- each occasion information obtained by the use of a surveillance device was given in evidence in a relevant proceeding; and
- the destruction of records or reports obtained by the use of surveillance devices.

The VI found that Victoria Police complied with these requirements.

Victoria Police kept details on the destruction of records and reports related to 26 surveillance device warrants in accordance with section 30N(f) of the SD Act.

Did Victoria Police maintain an accurate register of warrants and emergency authorisations?

The VI found that Victoria Police kept an accurate register of warrants, as required by section 30O of the SD Act.

The register specified for each warrant file inspected the following particulars:

- the date the warrant was issued;
- the name of magistrate or judge who issued the warrant, as well as the name of the law enforcement officer primarily responsible for its execution;
- the offence in relation to which the warrant was issued;
- the period during which the warrant was in force; and
- any variation or extension of the warrant.

With respect to the emergency authorisation, the register specified the following matters:

- the date the emergency authorisation was given;

- the name of senior officer who gave the authorisation, as well as the law enforcement officer to whom it was given;
- the offence connected to the authorisation; and
- the date the application was made for approval of powers exercised under the authorisation.

FINDINGS - REPORTS

Were reports to the magistrate or judge properly made?

Under section 30K of the SD Act, Victoria Police is required within the time specified in the warrant to make a report to the magistrate or judge who issued the warrant.

With respect to a surveillance device warrant, the report must state whether the warrant was executed and, if it was, to give the following details for its use:

- the name of each person involved in the execution of the warrant;
- the kind of surveillance device used;
- the period the device was used;
- the name of any person whose activities or conversations were captured by the use of the device or whose geographic location was determined by the use of a tracking device, if known;
- the premises for installation of the device or the location for its use, as applicable;
- the object in or on which the device was installed or the premises at which the object was located when the device was installed, as applicable;
- the benefit to the investigation of the use of the device as well as the general use made or to be made of the information derived from its use;
- compliance with any warrant conditions, as applicable;
- if the warrant was extended or varied, the number of such occurrences and the reasons for them; and
- if the warrant was revoked by the chief officer under section 20A(2), the reasons the device was no longer required and whether the PIM was notified of the revocation.

In the case of a retrieval warrant, the report must:

- give details of any premises entered, anything opened and any object removed and replaced;
- state whether the surveillance device was retrieved and, if not, the reason why;
- give details of compliance with any warrant conditions, as applicable; and
- state whether the chief officer revoked the warrant and, if so, whether the PIM was notified of this and the reasons for the revocation.

All reports made by Victoria Police under section 30K of the SD Act for warrants that ceased between 1 January and 30 June 2021 were made within the requisite timeframe; however one report connected to a surveillance device warrant contained an error.

Finding 1 – Incorrect information given in the report to the judge

In one warrant file, the register kept for the use and communication of information obtained by the use of a surveillance device shows information was used in making an application for a telecommunications interception (TI) warrant; however, this use is not included in the report to the judge as required by section 30K(2)(b)(viii) of the SD Act.

Victoria Police's TPU confirmed the error was in the report, not the register, and advised a supplementary report will be made to the judge to correctly state that information was used in an affidavit to support an application for a TI warrant. The VI will inspect this additional report at the next scheduled inspection.

Was the annual report to the Minister properly made?

The VI found that Victoria Police complied with the reporting requirements of s 30L of the SD Act. The annual report made by the Chief Commissioner for the 2020-2021 financial year met all reporting criteria and was submitted to the Attorney-General by 30 September 2021.

FINDINGS - TRANSPARENCY AND COOPERATION

The VI considers an agency's transparency, its cooperation during inspection, and its responsiveness to suggestions and issues to be a measure of its compliance culture.

Did Victoria Police self-disclose compliance issues?

Victoria Police's SPU made three self-disclosures at the inspection during the period. In respect of three warrants, supplementary reports were made to the judge under section 30K of the SD Act to give corrected information. Two supplementary reports gave an additional use for the information obtained by a surveillance device, and one other report corrected the period during which a device was used. The requirement to make these corrections was identified from SPU's quality assurance checks.

Victoria Police's SPU informed the VI of a process change with respect to overlooking a warrant when it is active but no devices are installed. This change was made in response to a significant delay it experienced in receiving a report from the TSU that confirmed an earlier installed device had been retrieved. As a result of this delay, the SPU was unable to confirm if the warrant could be revoked in a timely manner. The unit now monitors all active warrants it administers and seeks confirmation from the TSU about two weeks prior to each warrant's expiry to check whether any devices are still

in use under the warrant. This information subsequently informs further checks as to whether the warrant can be revoked or will likely require an extension.

Were issues identified at previous inspections addressed?

The VI partially re-inspected three warrant files to confirm corrections were made for errors identified during the previous inspection of records at Victoria Police's SPU. The VI confirmed in the case of two warrants a supplementary section 30K report was made, and for one other warrant the register was amended. However, the VI identified an error with respect to one supplementary report—it was not made to the judge who issued the warrant. In response to this feedback, the unit informed the VI that it made an additional supplementary report addressed to the correct judge. The VI will partially re-inspect this warrant file at the next scheduled inspection.