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# Inspection Report:

## *Terrorism (Community Protection) Act 2003*

Report by the Victorian Inspectorate on Victoria Police records inspected in September 2019

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# Overview

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This report presents the results of an inspection by the Victorian Inspectorate ('the VI') under s 37D of the *Terrorism (Community Protection) Act 2003* ('the TCPA') of Victoria Police records.

Under the TCPA, members of the Victoria Police can:

- Conduct covert searches of premises under the authority of a warrant;
- Detain and question people, including children, without charge; and
- Use special police powers, under the authority of a Supreme Court order or, in certain circumstances, under an interim authorisation.

These powers were given to Victoria Police to assist them to prevent, or respond to, a terrorist act, or the threat of a terrorist act.

The VI provides independent oversight of these powers by conducting six-monthly inspections and reporting to the Minister and to Parliament. At these inspections, the VI's role is to assess Victoria Police's compliance with Parts 2, 2AA and 3A of the TCPA. We have also considered whether Victoria Police appropriately prepared for the commencement of the new powers on 1 October 2018, whether it has developed processes to support compliance, and the agency's transparency and cooperativeness in its interactions with the VI.

Between the date of the VI's previous inspection on 23 March 2019 and the 3 September 2019, Victoria Police did not exercise its powers under the TCPA. Our one inspection on 3 September 2019 was therefore confined to reviewing progress on preparatory activities undertaken by the Counter-Terrorism Legal Unit ('the CTLU') of Victoria Police. It is evident the CTLU is committed to developing comprehensive processes to support compliance with the requirements of the TCPA, including embedding quality assurance mechanisms and checklists in its operations, and to training relevant officers.

The VI has not made any recommendations as a result of its inspection.

## HUMAN RIGHTS CONSIDERATIONS

The *Charter of Human Rights and Responsibilities Act 2006* ('the Victorian Charter') requires Victoria Police to consider the human rights of individuals when it exercises its powers. Furthermore, it would be unlawful for Victoria Police to act in a way that is incompatible with a human right. The powers given to Victoria Police under Parts 2, 2AA and 3A of the TCPA engage several of the human rights protected by the Victorian Charter, including:

- The right to liberty and security, and the right not to be subject to arbitrary detention;
- The right to humane treatment when deprived of liberty;
- Rights of children in the criminal process;

- The right not to have one's privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

The VI's role to assess Victoria Police's compliance with the requirements of these Parts of the TCPA contributes to the protection of the human rights of adults and children in Victoria.

# Introduction

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The TCPA governs Victoria Police's counter-terrorism powers.

The TCPA permits:

- Searches to be conducted covertly pursuant to a covert search warrant issued by the Supreme Court under Part 2. Covert search warrants can also permit the seizure and substitution of things, the copying or recording of things, the operation of electronic equipment either on the premises or remotely to copy, print or otherwise record information, and the testing or taking of samples.
- The making of preventative police detention decisions under Part 2AA in order to prevent or preserve evidence of a terrorist act. Adults can be detained for up to four days, and children aged 14 years or older can be detained for up to 36 hours.
- The use of special police powers under Part 3A pursuant to a Supreme Court Order or an interim authorisation. Special police powers entail Victoria Police using extraordinary measures to prevent, investigate, limit the impact of, or recover from, a terrorist act. Except in limited circumstances, an Order or interim authorisation must be approved by the Premier of Victoria (or delegate).

The Act imposes strict requirements on Victoria Police in their exercise of powers under these Parts of the TCPA.

## OUR ROLE

The VI performs an independent oversight function with respect to Parts 2, 2AA and 3A of the TCPA.

The VI is required to inspect Victoria Police records at least every six months to determine the extent of compliance with those Parts, and to deliver inspection reports as soon as practicably after 1 January and 1 July each year.

The powers given to the Victoria Police under the TCPA are amongst the most intrusive and coercive afforded to law enforcement agencies. The VI's oversight role is an important integrity response to ensure Victoria Police complies with requirements of the TCPA and provide the public with assurance that police powers are used lawfully.

## HOW WE ASSESS COMPLIANCE

The objective of our inspections is to determine the extent of compliance with the relevant Parts of the TCPA by the Victoria Police and its law enforcement officers.

The inspection methodology detailed in Appendix A sets out the criteria that the VI used at its first inspection in March 2019 to assess records associated with a covert search warrant. As there were no operational records to inspect at the September 2019 inspection, our assessment was confined to a consideration of these criteria:

- What activities has Victoria Police undertaken to ensure it is appropriately prepared to use new powers under the TCPA?
- Was the agency transparent and cooperative with the VI?

## HOW WE REPORT TO THE MINISTER AND PARLIAMENT

To ensure procedural fairness, Victoria Police is given an opportunity to comment on any findings from our inspections, and to furnish additional records that might assist our assessment. After this process, the inspection results are considered finalised.

Our inspection reports usually include findings resulting from record checks and qualitative assessments of compliance activities such as training and the development of procedures. We provide more detail where there is a finding of non-compliance.

The VI may, in its discretion, not report on administrative issues (such as typographical or transposition errors) or instances of non-compliance where the consequences are negligible.

# Inspection Results

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## INSPECTION DETAILS

The VI conducted its inspection on 6 September 2019 at the Counter-Terrorism Legal Unit ('the CTLU') of Victoria Police. We did not inspect any operational records as there were no relevant actions by Victoria Police under Part 2, 2AA or 3A of the TCPA for the VI to assess.

The VI received briefings from senior CTLU personnel and inspected a broad range of documents containing procedural, training and advice material.

## FINDINGS - PREPARATORY ACTIVITIES

The VI sought information from the CTLU on Victoria Police's progress in delivering training to its staff and devising standard procedures on the exercise of new powers. The VI considers these preparatory activities an important aspect of demonstrating that Victoria Police would be ready to comply with the new provisions of the TCPA.

### ***Have officers been trained in their obligations?***

The VI requested a briefing from the CTLU on the training programs developed and delivered to officers who would need to understand their obligations under the TCPA and follow new procedures.

The VI reported following its last inspection that it is evident the CTLU has considered how to best train officers in the TCPA's requirements and new internal procedures, and has developed a range of resources to equip officers to comply with them.

The Unit has progressed in the delivery of its training programs: at the September inspection the VI inspected the 'CT Legal Response Training Manual Resource Package' and the schedule of the CTLU's training activities. At the time of the inspection, Victoria Police had delivered its one-day training program to approximately 30 legal officers, and a 'Command Cadre' of officers was obliged to maintain its training and knowledge on an ongoing basis. A major scenario-based intensive training exercise was also planned for October 2019.

### ***Has the agency developed policies and procedures for using the new powers?***

The VI requested a progress update from the CTLU on their development of policies and procedures for using existing and new powers under the TCPA.

At the last inspection, the VI found that Victoria Police had established organisational command structures to support the operational activities that would be involved in exercising powers under Parts 2, 2AA and 3A. This included arrangements for ensuring trained officers would be available and properly equipped during heightened (and potentially complex) tactical situations that might occur out of hours.

The CTLU indicated that since the last inspection its focus had been on procedures necessary for the exercise of special police powers under Part 3A of the TCPA, in particular the logistical aspects to decision-making and the necessary communication of information. Victoria Police had commenced engaging with the Department of Premier and Cabinet and its General Counsel on these processes, in particular those associated with interim authorisations and variations to, or cancellation of, authorisations.

The VI also inspected the following procedural documents:

- CTLU Standard Operating Procedures for Preventative Police Detention Applications containing process map, forms and templates. The VI suggested a minor improvement (addition of time-stamp) to one template, which was accepted at inspection.
- Several checklists for procedures pursuant to Part 2AA Preventative Police Detention actions.
- CTLU Standard Operating Procedures for Special Police Powers, containing process map, forms and templates.

The CTLU was continuing to develop information packs for officers who are assigned roles under the TCPA.

The VI suggested that Victoria Police supplement its standard procedures documents with information about its obligations under the Victorian Charter, and consider how those obligations would be met. The VI will follow up on those considerations at the next inspection.

***Has the agency engaged with other bodies that have a new role in relation to the Victoria Police's powers under Parts 2, 2AA and 3A?***

In addition to the VI's new role, other entities have operational or accountability functions under the TCPA – these include the Public Interest Monitor, Victorian Ombudsman, the Independent Broad-based Anti-corruption Commission, Victoria Legal Aid, and the Commissioner for Children and Young People. Victoria Police is required to notify or otherwise interact with these entities when exercising certain powers under Parts 2, 2AA and 3A. We sought to understand the extent to which Victoria Police was prepared to meet these requirements by seeking information about its preparatory engagement with these bodies.

The CTLU confirmed that it had progressed its communication arrangements with Victoria Legal Aid and the Commissioner for Children and Young People which would be used if a Part 2AA decision was made. It had also commenced engagement with Youth Justice and Corrections Victoria, in relation to the relevant provisions of Part 2AA.



## 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.

As at the previous inspection, the CTLU were transparent with the VI about the risk areas involved in exercising counter-terrorism powers, and Victoria Police's areas of focus for internal training programs, procedures and guidance resources. Its officers were evidently engaged and committed to Victoria Police's internal compliance efforts and the VI's inspection program.

# Appendix A – Inspection Criteria and Methodology

Ref	Criteria	Methodology
<b>1</b>	<b>What activities has the agency undertaken to ensure it is appropriately prepared to use its new powers under the TCPA?</b>	
1.1	Has the Chief Commissioner made an appointment of officers or a class of officers for the purposes of Pt 2AA? Have those officers been trained in their obligations?	Record checks – the appointment instrument; training documents. Qualitative assessment - quality of education programs, awareness campaigns and training.
1.2	Has the agency developed policies and procedures for using the new powers?	Record checks: policies and procedures, templates, checklists. Qualitative assessment - how thoroughly have procedures been developed, how widely are they distributed and adopted (are they in use?), have officers been guided in how to apply them. Level of engagement and responsiveness to VI.
1.3	Has the agency engaged with other bodies (such as the VO, IBAC, VLA, the Commission for Children and Young People, the PIM) on requirements associated with using the powers?	Qualitative assessment - engagement activity.
<b>2</b>	<b>Were covert search warrants obtained and executed in accordance with Pt 2 of the TCPA?</b>	
2.1	Were covert search warrants properly obtained? - Does the agency have sufficient procedures to ensure that warrants are properly applied for? - Were applications for covert search warrants properly made? - Were notifications to the PIM of applications for warrants properly given?	Record checks: Do relevant documents meet requirements? Have application procedures been complied with? Notification to PIM meets form, timeliness and content requirements?
2.2	Were covert search warrants properly executed? - Does the agency have sufficient procedures to ensure that covert searches are properly executed? - Were covert searches properly conducted? - If the warrant was issued subject to conditions, were they complied with?	Records checks: Contemporaneous operational records contain appropriate information and properly completed. If there were conditions on warrants were they complied with? Are there sufficient operational records to demonstrate compliance?

<b>3</b>	<b>Was the agency transparent and were reports properly made?</b>	
3.1	Were all records kept in accordance with the TCPA? What are the agency's record-keeping procedures and are they sufficient?	Records check.
3.2	Were reports properly made? - Were reports on covert search warrants sent to the VI in accordance with s 11 and including the matters required to be included?	Internal records (VI receives report).
3.3	Did the Chief Commissioner notify the VI of the security clearance required?	Internal records (VI receives notice)
3.4	Was the agency cooperative and frank? - Has the agency engaged with the VI's office to prepare for the new oversight? - Does the agency have a culture of compliance? - Was the agency proactive in identifying compliance issues? - Did the agency self-disclose issues? - Were issues identified at previous inspection(s) addressed?	Qualitative assessment based on engagement and provision of records.