

**VICTORIAN
INSPECTORATE**

Inspection Report:

Terrorism (Community Protection) Act 2003

Report by the Victorian Inspectorate on Victoria Police records
inspected in February 2023

Introduction

This report presents the results of an inspection conducted by the Victorian Inspectorate (VI) of Victoria Police records under the *Terrorism (Community Protection) Act 2003* (the TCPA). It acquits the VI's obligation under section 37D of the TCPA to make a report on the results of its inspection to determine the extent of compliance achieved by Victoria Police and its law enforcement officers with Parts 2, 2AA and 3A of the TCPA.

Under the TCPA, the VI provides independent oversight of Victoria Police's powers to:

- conduct covert searches of premises under the authority of a warrant [Part 2]
- detain and question people, including children, without charge [Part 2AA]
- use special police powers, under the authority of a Supreme Court order or, in certain circumstances, under an interim authorisation [Part 3A].

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. Strict requirements are imposed on Victoria Police in its exercise of powers under these Parts of the TCPA.

The VI provides independent oversight of these powers by conducting six-monthly inspections (where operational records are available) and reporting to Parliament as well as the Minister (the Attorney-General).

At these inspections, in addition to assessing Victoria Police's compliance with Parts 2, 2AA and 3A of the TCPA, the VI also assesses Victoria Police's processes to support compliance in its use of these powers - for example, the development of procedures, training for relevant officers and stakeholder engagement. We also comment on Victoria Police's transparency and cooperativeness in its interactions with the VI.

To date, the VI has only been required to inspect operational records associated with covert search warrants. The inspection methodology detailed in **Appendix A** sets out our criteria to assess these records.

For the purpose of inspections, the VI engages with Victoria Police's Counter-Terrorism Legal Unit (the CTLU) to inspect records associated with the use of the TCPA powers and to review Victoria Police's processes to support compliance with the requirements of the TCPA. We note in this report the CTLU officers' cooperative and transparent engagement with the VI.

For the September 2022 to February 2023 period (the reporting period), the CTLU advised that Victoria Police had not exercised its powers under the TCPA. In the absence of any operational records to inspect, in February 2023 the VI inspected materials related to preparatory activities such as stakeholder engagement and training.

In addition to inspecting materials related to preparatory activities, the VI followed-up on matters connected to findings from an inspection of Part 2 covert search warrants conducted in February 2021 during the reporting period.

The VI has not made any recommendations as a result of its February 2023 inspection.

Inspection of Victoria Police records

The VI conducted its inspection on 24 February 2023 at the CTLU of Victoria Police. We did not inspect any operational records as there was no relevant activity by Victoria Police under Part 2, 2AA or 3A of the TCPA for the VI to assess. The VI however inspected a broad range of procedural and training related material and received briefings from senior CTLU personnel to assess Victoria Police's preparatory activities.

FINDINGS – PREPARATORY ACTIVITIES

During an inspection, the VI seeks information from Victoria Police on its progress in:

- delivering training to its staff
- making improvements to standard procedures on the exercise of TCPA powers, including the development of templates
- engaging with stakeholders at relevant agencies.

Since Victoria Police has yet to exercise much of its powers under the TCPA, the VI considers these preparatory activities an important aspect of demonstrating Victoria Police has developed processes that enable it to comply with the TCPA provisions. The VI notes Victoria Police's powers under the TCPA are highly intrusive, seldom used, and are complex to administer.

Furthermore, the VI considers Victoria Police's engagement with other bodies with a function under the TCPA to be important for ensuring different roles are clearly understood and statutory notifications can be properly made.

Have officers been trained in their obligations?

At the February 2023 inspection, the VI was provided with records and a briefing on training the CTLU had facilitated during the reporting period. This training was provided to other groups within Victoria Police such as Counter Terrorism Command (CTC), and Legal Services Division, to increase familiarity with procedures that deal with different parts of the TCPA.

The CTLU also scheduled multiple training sessions that it would facilitate in 2023. This training, which is largely scenario-based, covers various powers available to Victoria Police under the TCPA. It is primarily focused on legislative obligations, the application process, and the role of specific officers.

In addition to providing training to Victoria Police officers who may have a role to perform in counter terrorism, the scheduled training and workshops are also directed at external stakeholders with a function under the TCPA. This includes the Australian Defence Force, and the Department of Premier and Cabinet.

The VI was informed that the CTLU would facilitate a scenario-based training session in May 2023 for multiple Victorian agencies with Preventative Police Detention roles and functions under Part 2AA of the TCPA.

Has Victoria Police further developed its policies and procedures for using TCPA powers?

The VI inspected updated procedures used by the CTLU to administer Parts of the TCPA. During the reporting period, significant updates connected to the use of powers under Parts 2AA and 3A of the TCPA were inspected.

Changes to procedures dealing with Part 2AA involve the inclusion of a dedicated information pack and checklists for the Authorised Police Officer (APO) and Nominated Senior Police Officer (NSPO). Each pack includes relevant templates, and in the case of the NSPO, a decision-making guide. Additional information relating to the detention of children, and notifications made to the Public Interest Monitor by the APO, has also been added to these procedures. Furthermore, a guide has been added to assist the NSPO conduct a periodic review of the detention of a person. The CTLU has also created a document that provides a detailed procedural timeline for the actions that need to be performed by different Victoria Police officers when exercising Part 2AA powers.

During the reporting period, the CTLU made several updates to its procedures that deal with Part 3A special powers. Information has been consolidated with the inclusion of links to the different types of authorisations. Procedures connected to different authorisations have been updated, including new and amended template forms for requesting approval from the Victorian Premier as well as for making an application to the Supreme Court of Victoria.

The VI also inspected a decision-making guide developed by the CTLU to assist CTC in utilising various powers under the TCPA, including an overview of the threshold for making applications as well as the approval process. This guide has been added to the CTLU's procedures, and the VI was informed that it was distributed to CTC.

No changes to procedures for administering Part 2 powers were made during the reporting period. As mentioned in our previous TCPA report, the VI inspected updates the CTLU made to its Part 2 procedures in August 2022. The VI notes that any further changes to these procedures are pending the outcome of discussions between the VI and Victoria Police on the role of the applicant in executing a covert search warrant.

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

The CTLU has continued to engage with external bodies with an operational or accountability function under the TCPA by including them in training exercises.

Rather than progress memorandums of understanding with external stakeholders, the CTLU advised that it is instead focused on developing letters of understanding (LOU) with these bodies since it is a more streamlined process. The VI was informed by the CTLU that it progressed a LOU with Victoria Legal Aid during the reporting period. The VI will seek further updates connected to the making of LOUs at the next scheduled inspection.

FINDINGS – TRANSPARENCY AND COOPERATION

During inspections, we have close regard to an agency's transparency (including disclosure of issues), cooperation, and responsiveness to suggestions and issues. We view these elements as key to understanding the level of compliance at an agency. An effective compliance culture is necessary to strengthen and maintain confidence in the Victorian integrity system.

In our previous TCPA report, we noted ongoing discussions with Victoria Police on legal points associated with the role of the applicant in executing a covert search warrant. While these discussions have progressed, a consensus on the position has not yet been settled. The VI will provide further updates in this matter in the next inspection report, including the status of three recommendations we made from our earlier inspection of covert search warrants.

Appendix A - Inspection Criteria and Methodology

Ref	Criteria	Methodology
1	What activities has Victoria Police undertaken to ensure it can comply with its use of powers under the TCPA?	
1.1	Have officers with a role under the TCPA been trained in their obligations?	Record checks – training documents. Qualitative assessment - quality of education programs, awareness campaigns and training.
1.2	Has the agency further developed its policies and procedures for using TCPA powers?	Record checks – policies and procedures, templates, checklists. Qualitative assessment - how well have any amendments been communicated? Level of engagement and responsiveness to VI.
1.3	Has the agency further 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.
2	Were covert search warrants obtained and executed in accordance with Pt 2 of the TCPA?	
2.1	Were covert search warrants properly obtained? <ul style="list-style-type: none"> - 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? Do notifications to the PIM meet form, timeliness, and content requirements?
2.2	Were covert search warrants properly executed? <ul style="list-style-type: none"> - 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?
3	Was the agency transparent and were reports properly made?	
3.1	Were reports properly made? Were reports on covert search warrants sent to the VI in accordance with s 11 and do they include all required information?	Internal records (VI receives report).

3.2	Was the agency cooperative and frank? <ul style="list-style-type: none">- 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.
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