

**VICTORIAN
INSPECTORATE**

Inspection Report:

Terrorism (Community Protection) Act 2003

Report by the Victorian Inspectorate on Victoria Police records for the March to August 2021 period

Introduction

The Victorian Inspectorate (VI) is required to inspect the records of Victoria Police at least every six months to determine the extent of its compliance with Parts 2, 2AA and 3A of the *Terrorism (Community Protection) Act 2003* ('the TCPA'), and to deliver inspection reports to the Victorian Parliament and the Minister (Attorney-General) as soon as practicable after 1 January and 1 July each year.

The VI determines the extent of compliance achieved by Victoria Police and its law enforcement officers with Parts 2, 2AA and 3A of the TCPA by assessing the records made available to us at the time of inspection.

The VI engages with the Counter-Terrorism Legal Unit ('the CTLU') of Victoria Police to inspect records associated with Victoria Police's use of powers under the TCPA. While not mandated by the TCPA, during inspections the VI also reviews Victoria Police's processes to support compliance with the requirements of the TCPA, such as through the development of procedures and training for relevant officers.

In the lead up to the inspection planned for August 2021, the CTLU confirmed to the VI that Victoria Police did not exercise its powers under the TCPA in the period between the last inspection of records, conducted on 25 February 2021, and the proposed inspection date in August 2021. Accordingly, in August 2021 the VI was unable to inspect any records in accordance with section 37B(1) of the TCPA.

At the inspection conducted in February 2021, materials related to preparatory activities such as stakeholder engagement and training were inspected in addition to operational records. In advance of the proposed inspection in August 2021, the CTLU did not bring to the attention of the VI any matters relevant to the TCPA reporting and inspection regime that would have warranted an inspection of material that is not mandated for inspection by section 37B(1) of the TCPA. Accordingly, no inspection of Victoria Police records and associated materials was conducted in August 2021.

The VI may not be required to report under section 37D of the TCPA as no inspection of Victoria Police records was conducted during the March to August period. However, without this report, Parliament and the Attorney-General would not be aware that enquiries were made by the VI with Victoria Police to establish that relevant powers were not used during the period. It also serves to remind all of the VI's inspection criteria and methodology.

Inspection of Victoria Police records

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]; and
- 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.

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 Part 2 records.

The VI inspects a broad range of documents containing procedural and training related material and also receives briefings from senior CTLU personnel to assess Victoria Police's preparatory activities as well as its responsiveness to any issues we have raised.

In conjunction with the criteria at Appendix A, the following provides an overview of the checks the VI ordinarily makes for its inspection of TCPA records.

FINDINGS – PREPARATORY ACTIVITIES

The VI seeks information from the CTLU on Victoria Police's progress in delivering training to its staff; making improvements to standard procedures on the exercise of TCPA powers including the development of templates; and stakeholder engagement with associated agencies. The VI considers these preparatory activities an important aspect of Victoria Police demonstrating that it has developed processes that enable it to comply with TCPA provisions. Set out below are the issues addressed by the VI during inspections and the types of materials examined or advice sought.

Have officers been trained in their obligations?

- The VI reviews the training programs developed and delivered to officers with a role under the TCPA.

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

- The VI seeks an update on any changes to Victoria Police's policies and procedures, including templates, for using TCPA powers.

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

- The VI considers Victoria Police's engagement with other bodies, such as the Public Interest Monitor and the Commission for Children and Young People, on roles and functions under the TCPA, including participation in any scenario-based training exercises.
- The VI also considers communication arrangements with other agencies such as the development of memoranda of understanding.

FINDINGS – TRANSPARENCY AND COOPERATION

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

- The level of engagement and cooperation with the VI's inspection program, including responsiveness to any suggestions or issues raised.
- Self-disclosure for any compliance issues.

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 Part 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 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.
-----	---	--