

**VICTORIAN
INSPECTORATE**

Inspection Report:

Terrorism (Community Protection) Act 2003

Report by the Victorian Inspectorate on Victoria Police records inspected in February 2022

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Overview

This report presents the results of an inspection conducted by the Victorian Inspectorate ('the 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, members of Victoria Police can:

- 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.

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

During the six-monthly period covered by this report, being September 2021 to February 2022, the CTLU confirmed to the VI that Victoria Police did not exercise its powers under the TCPA. In the absence of any operational records to inspect, at the February 2022 inspection the VI inspected materials related to preparatory activities such as stakeholder engagement and training. Additionally, the VI inspected procedures and related documents amended by the CTLU in response to findings and recommendations made by the VI following its inspection of covert search warrants in February 2021.

The VI has not made any recommendations as a result of its February 2022 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 exercising its powers. 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; and
- the right not to have one's privacy, family, home, or correspondence unlawfully or arbitrarily interfered with.

The VI's role in assessing 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

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 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, to protect people from a terrorist act. An application for an Order must be approved in writing by the Premier of Victoria.

The Act imposes strict requirements on Victoria Police in its 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 the records of Victoria Police at least every six months to determine the extent of its compliance with those Parts and deliver reports on the results of its inspections to Parliament and the Attorney-General as soon as practicable after 1 January and 1 July each year.

The powers given to Victoria Police under the TCPA are amongst the most intrusive and coercive afforded to Victorian law enforcement agencies. The VI's oversight role is an important integrity response to ensure Victoria Police complies with requirements of the TCPA and to assure the public 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 uses to assess records associated with a covert search warrant—this being the only type of operational record the VI has so far had cause to inspect. As there were no operational records to inspect at the February 2022 inspection, the VI’s assessment was confined to a consideration of these criteria:

- What activities has Victoria Police undertaken to ensure it is appropriately prepared to use its powers under the TCPA?
- What changes has Victoria Police made in response to the VI’s findings and recommendations from the February 2021 inspection?
- Was Victoria Police transparent and cooperative with the VI?

HOW WE REPORT ON COMPLIANCE

To ensure procedural fairness, Victoria Police was given an opportunity to comment on the preliminary findings from our inspection and to furnish additional records that might assist our assessment.

Included in this report are findings resulting from the VI’s inspection and assessment of records and documents relating to Victoria Police’s powers under the TCPA. The report provides 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 with negligible consequences.

Inspection Results

INSPECTION DETAILS

The VI conducted its inspection on 24 February 2022 at the CTLU of Victoria Police. We did not inspect any operational records as there were no relevant activity by Victoria Police under Part 2, 2AA or 3A of the TCPA for the VI to assess.

The VI inspected a broad range of documents containing procedural and training related material and received briefings from senior CTLU personnel to assess Victoria Police's preparatory activities as well as its responsiveness to matters raised by the VI from the February 2021 inspection.

FINDINGS – PREPARATORY ACTIVITIES

The VI inspected records at the CTLU connected with Victoria Police's delivery of training to its staff, templates, standard operating procedures on the exercise of TCPA powers, and stakeholder engagement. The VI considers these preparatory activities an important aspect of demonstrating Victoria Police has developed processes that enable it to comply with TCPA provisions.

Have officers been trained in their obligations?

At the February 2022 inspection, the VI was provided with records and a briefing on a wide range of training the CTLU completed during the six months preceding the inspection as well as the training and workshops it scheduled in 2022. Although training opportunities during the period were impacted by the COVID-19 pandemic, various presentations and exercises involving stakeholders with a role under the TCPA were conducted in relation to Parts 2, 2AA and 3A of the TCPA as well as related matters such as client legal privilege. In addition to Victoria Police officers who may have a role to perform in counter terrorism, training and workshops scheduled in 2022 will also involve external stakeholders such as public transport providers and the Public Interest Monitor (PIM).

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

Other than some minor updates to procedures relating to Part 2AA, for example oversight of detention provided by the nominated senior police officer, changes have focused on the use of Part 2 powers under the TCPA. These changes were made in response to findings and recommendations made by the VI as a result of its inspection of three covert search warrants in February 2021 and are detailed on page 9 in this report. Advice received from the PIM in February 2022 led the CTLU to make other amendments with respect to matters such as the secure delivery of documents via electronic means.

The VI previously reported the CTLU agreed to amend its template for the warrant report it makes under section 11 of the TCPA in response to the VI's findings and feedback from the February 2021 inspection. The VI confirmed the template was updated so that it prompts Victoria Police to provide the VI with a copy of the relevant warrant with the report. Additionally, the template was amended to report greater contextual information connected to the warrant to the VI, for example its validity period and the location of the applicant during the warrant's execution as well as a concise description of the actions of all other officers involved in its execution. The VI commends the CTLU for making these changes that exceed its statutory obligations.

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

Victoria Police's level of engagement with external bodies with a role under the TCPA was impacted by the COVID-19 pandemic during the period. The CTLU has however engaged with external stakeholders including the Australian Defence Force, Department of Premier and Cabinet, Independent Broad-based Anti-corruption Commission, and the PIM with respect to TCPA powers. The CTLU has scheduled workshops in 2022 that will involve the participation of external stakeholders in a coordinated multi-agency counter terrorism response.

No further progress was reported at this inspection in relation to the development of memoranda of understanding with stakeholders, including the Commissioner for Children and Young People, Youth Justice, Victoria Legal Aid and Corrections Victoria.

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, which is necessary to maintaining the strength of, and confidence in, the Victorian integrity system.

Did Victoria Police self-disclose compliance issues?

Victoria Police did not make any compliance-related disclosures at the inspection.

Were issues identified at previous inspections addressed?

In response to findings of non-compliance by the VI in relation to three covert search warrants inspected in February 2021, the CTLU informed the VI it had made some changes to its procedures and related checklists. The VI inspected the relevant records in February 2022 to confirm these changes, including Victoria Police's implementation of recommendations made by the VI following the 2021 inspection.

Recommendation 1: *That Victoria Police add a quality assurance measure to its procedures to ensure the draft warrant provided to the Supreme Court is consistent with the information given in the supporting affidavit.*

- The VI inspected a checklist at the CTLU that had been amended to require the applicant and a CTLU lawyer ensure information in the draft covert search warrant is consistent with the affidavit.

Recommendation 5: *That Victoria Police add a quality assurance measure to its procedures to ensure the warrant report provided to the VI is consistent with the information given in the warrant and notes any issues concerning any inconsistency between the warrant and the supporting affidavit.*

- The VI confirmed a quality assurance measure was added to the CTLU's procedures to ensure the warrant report Victoria Police provides the VI is consistent with the information given in the corresponding warrant. Additionally, the revised procedures direct any identified inconsistencies between the warrant and supporting affidavit to be reported to the VI.

In the case of three other recommendations (2–4) made by the VI, which all relate to a finding the covert search warrants were not executed according to prescribed terms, the VI was informed Victoria Police has not made any procedural changes with respect to the role of the applicant during the execution of a covert search warrant or the selection of applicant. However, its Counter Terrorism Command will consider potential changes in this area. Discussions between the VI and Victoria Police in this matter are ongoing, with further updates to be provided in the next inspection report.

The VI also inspected records to confirm changes the CTLU advised the VI it had made in response to a finding from the February 2021 inspection that Victoria Police made an application for a covert search warrant prior to obtaining the necessary approval. The VI confirmed the CTLU made the following changes:

- amended its procedures for making an application for multiple warrants so that it includes checks to ensure approval from the Assistant Commissioner refers to each property;
- included an additional item to the related checklist to require the Assistant Commissioner's approval to specify every premises to be searched; and
- gave greater attention to the application process for training on Part 2 powers scheduled in 2022 and included lessons learned from the above-mentioned finding of non-compliance.

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? <ul style="list-style-type: none"> - 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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