
Inspection Report:

Terrorism (Community Protection) Act 2003

Report by the Victorian Inspectorate on Victoria Police records for the March to August 2023 period

Introduction

The Victorian Inspectorate (VI) must 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 (the Attorney-General) as soon as practicable after 1 January and 1 July each year.

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 Preventative Police Detention]
- 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 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 protocols. We also comment on Victoria Police's transparency and cooperativeness in its interactions with the VI.

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. The CTLU is the primary unit for administering Victoria Police's use of powers under the TCPA.

For the March to August 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 or any compliance matters raised during the reporting period, the VI did not conduct an inspection planned for August 2023.

To date, the VI has only reported on inspection findings associated with covert search warrants.¹ The inspection methodology detailed in **Appendix A** sets out our criteria to assess these records.

Although no inspection was conducted in August 2023, this report acquits the VI's obligation under section 37D of the TCPA to make a report at six-monthly intervals.

¹ The February 2021 inspection report dealt with the most recent inspection of covert search warrants.

Inspection of Victoria Police records

The VI did not inspect any records for the period covered by this report as there was no relevant activity by Victoria Police under Part 2, 2AA or 3A of the TCPA for the VI to assess. The matters included in this report are restricted to a multi-agency training session facilitated by the CTLU in June 2023, as well as a brief update in our engagement with Victoria Police in regards to procedural changes.

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 complex to administer.

Have officers been trained in their obligations?

On 14 June 2023, the CTLU facilitated a scenario-based training session for multiple Victorian agencies with Preventative Police Detention roles and functions under Part 2AA of the TCPA. In addition to Victoria Police officers who may have a role to perform in counter terrorism, this training also involved external stakeholders with a function under the TCPA including, among others, the Public Interest Monitor, the Commissioner for Children and Young People, the Victorian Ombudsman, and the Independent Broad-based Anti-corruption Commission.

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 the role of the applicant in executing a covert search warrant. During the reporting period however, these discussions remained on hold pending the receipt of further information. 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	<p>Was the agency cooperative and frank?</p> <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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