



Inspection Report:

Terrorism (Community Protection) Act 2003

Report by the Victorian Inspectorate on Victoria Police records inspected in March 2020

Contents

Overview.....	1
HUMAN RIGHTS CONSIDERATIONS	1
Introduction.....	3
OUR ROLE.....	3
HOW WE ASSESS COMPLIANCE	3
HOW WE REPORT TO THE MINISTER AND PARLIAMENT	4
Inspection Results	5
INSPECTION DETAILS.....	5
FINDINGS - PREPARATORY ACTIVITIES	5
FINDINGS - TRANSPARENCY AND COOPERATION	7
Appendix A – Inspection Criteria and Methodology.....	8

Overview

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 3 September 2019 and the 6 March 2020, Victoria Police did not exercise its powers under the TCPA. Our one inspection on 6 March 2020 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 exercising 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.
- 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 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 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 to the Victorian Parliament 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 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 March 2020 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 Victoria Police 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

INSPECTION DETAILS

The VI conducted its inspection on 6 March 2020 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; devising standard procedures on the exercise of new powers including the development of templates; and stakeholder engagement with associated agencies. 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 CTLU continues to demonstrate a strong commitment to training officers in the TCPA's requirements and new internal procedures, and has further developed a range of resources to equip officers to comply with them.

Since September 2019, the CTLU has progressed a number of scenario-based training exercises involving officers from Victoria Police such as those from its Counter Terrorism Command (CTC) as well as from various stakeholder groups including the Department of Premier and Cabinet (DPC); Australian Defence Force (ADF); and the Victorian Joint Counter Terrorism Team (JCTT).

Training conducted during this period has included the following:

- A 5-day training exercise was conducted in October 2019 involving members of Victoria Police working alongside a range of stakeholders including DPC and its General Counsel as well as ADF personnel in a variety of scenarios including conducting searches.
- In late October 2019, multiple levels of command within Victoria Police participated in an exercise that tested decision making in a rapidly evolving and escalating scenario. A series of examinations at a mock inquest were subsequently held that further tested decision making

on the use or non-use of Part 3A special police powers, including human rights considerations.

- In mid-December 2019, the CTC and the JCTT facilitated training on protocols developed for exercising Part 3A powers such as making authorisations.

The VI inspected the CTLU's training activities calendar for 2020. It includes 20 training workshops scheduled between February and November. It is expected that further training will be conducted on an ad-hoc basis throughout the year. Training will cover a range of topics and involve multiple stakeholders, with an increased focus on the use of preventative detention powers under Part 2AA of the TCPA.

The CTLU also expects to supplement its scenario-based training exercises by introducing annual desktop refresher training from this year for officers with obligations under the TCPA.

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, including templates, for using existing and new powers under the TCPA.

The VI found that Victoria Police has made further improvements to the comprehensive set of procedural manuals it maintains for exercising powers under Parts 2, 2AA and 3A of the TCPA. Changes made to these procedures documents since the last inspection included the addition of Victorian Charter obligations for decision makers. These changes included updates to checklists as well as the inclusion of a table in each manual that covers the various Charter obligations. The requirement to consider the Charter has been further reinforced by reference made to it in training resource packages developed by Victoria Police since late 2019.

Whilst Victoria Police has made some refinements to the templates it has developed for making and approving applications for using powers under the TCPA since the last inspection, this remains a work in progress. For example, templates available for approving covert search warrant applications and interim authorisations for using special powers now include both a time and date stamp, however others such as for approving preventative detention decisions have not yet been updated with this change. The VI will follow up on template updates 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, other entities also 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.

Since the last inspection, the CTLU has further progressed its engagement with these bodies. This engagement has included inviting their participation in scenario-based training exercises. The CTLU indicated that it is planning to conduct desk top scenario based training later this year with officers at both the Commissioner for Children and Young People as well as Youth Justice.

The CTLU confirmed it had also progressed its communication arrangements with other agencies with a role under the TCPA. Memorandums of understanding with Victoria Legal Aid, Commissioner for Children and Young People, Youth Justice, and Corrections Victoria remain in development. The CTLU further indicated that it expects to progress its engagement with IBAC and the Victorian Ombudsman on TCPA related roles and procedures.

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.

Consistent with previous inspection findings, the CTLU was 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
1	What activities has the agency undertaken to ensure it is appropriately prepared to use its new powers under the TCPA?	
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.
2	Were covert search warrants obtained and executed in accordance with Pt 2 of the TCPA?	
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?

3	Was the agency transparent and were reports properly made?	
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.