

**VICTORIAN
INSPECTORATE**

Inspection Report:

Terrorism (Community Protection) Act 2003

Report by the Victorian Inspectorate on Victoria Police records scheduled for inspection for the period March 2020 to September 2020

Introduction

The Victorian Inspectorate (VI) is required to inspect the records of Victoria Police at least every 6 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 as soon as practicable after 1 January and 1 July each year.

Although the VI had scheduled an inspection of Victoria Police records on 3 September 2020, the VI did not conduct an inspection of records under the TCPA for the preceding 6-monthly period. This decision was made based on the following considerations:

- Workplace restrictions made in response to the COVID-19 pandemic; and
- The absence of any operational records for the period requiring inspection.

In the lead up to the scheduled inspection, Victoria Police's Counter Terrorism Legal Unit (CTLU) confirmed to the VI that Victoria Police did not exercise its powers under the TCPA for the period covered by the inspection. The CTLU did not bring to the attention of the VI any matters subject to the TCPA reporting and inspection regime prior to the conclusion of the inspection period.

In September 2019, and again in March 2020, the VI's inspection of TCPA records was confined to reviewing the CTLU's progress on preparatory activities in the absence of any operational records to inspect. In successive reports made to Parliament, the VI has commented on Victoria Police's preparedness to use its powers under the TCPA. On each occasion, the VI has reported on the CTLU's comprehensive processes to support compliance with the TCPA, including its standard operating procedures, checklists, training and stakeholder engagement.

This report is made to acquit the VI's obligation under s 37D of the TCPA to make a 6-monthly report to Parliament, and provide a copy to the Attorney-General, on the results of its inspection for the March 2020 to September 2020 period. Whilst on this occasion the VI did not conduct an inspection for this period, the following section provides an overview of the types of checks the VI ordinarily makes from its inspection of Victoria Police records.

Inspection of Victoria Police records

The powers given to Victoria Police under the TCPA are amongst the most intrusive and coercive afforded to law enforcement agencies. 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.

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].

The VI provides independent oversight to ensure Victoria Police complies with requirements of the TCPA and to provide the public with assurance that these powers are used lawfully. We assess the records made available to us at the time of inspection to determine the extent of compliance achieved by Victoria Police and its law enforcement officers with the relevant Parts of the TCPA.

To date, the VI has only been required to inspect operational records associated with a covert search warrant. The inspection methodology detailed in Appendix A sets out our criteria to assess Part 2 records.

Our inspections have so far been largely confined to a consideration of these criteria:

- What activities has Victoria Police undertaken to ensure it is appropriately prepared to use its TCPA powers?
- Was Victoria Police transparent and cooperative with the VI?

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 progress in making 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; devising 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 demonstrating that Victoria Police has developed processes that enable it to comply with TCPA provisions.

Have officers been trained in their obligations?

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

Has the agency developed policies and procedures for using the new powers?

- An update on the development of policies and procedures, including templates, for using TCPA powers.

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?

- Engagement with other bodies, such as the Public Interest Monitor and the Commissioner for Children and Young People, on roles and functions under the TCPA including participation in any scenario-based training exercises.
- Communication arrangements with other agencies such as the development of memorandums of understanding.

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.

- 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 the agency undertaken to ensure it is appropriately prepared to use its new powers under the TCPA?	
1.1	<p>Has the Chief Commissioner made an appointment of officers or a class of officers for the purposes of Pt 2AA?</p> <p>Have those officers been trained in their obligations?</p>	<p>Record checks – the appointment instrument; training documents.</p> <p>Qualitative assessment - quality of education programs, awareness campaigns and training.</p>
1.2	<p>Has the agency developed policies and procedures for using the new powers?</p>	<p>Record checks: policies and procedures, templates, checklists.</p> <p>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.</p> <p>Level of engagement and responsiveness to VI.</p>
1.3	<p>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?</p>	<p>Qualitative assessment - engagement activity.</p>
2	Were covert search warrants obtained and executed in accordance with Pt 2 of the TCPA?	
2.1	<p>Were covert search warrants properly obtained?</p> <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? 	<p>Record checks:</p> <p>Do relevant documents meet requirements?</p> <p>Have application procedures been complied with?</p> <p>Notification to PIM meets form, timeliness and content requirements?</p>
2.2	<p>Were covert search warrants properly executed?</p> <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? 	<p>Records checks:</p> <p>Contemporaneous operational records contain appropriate information and properly completed.</p> <p>If there were conditions on warrants were they complied with? Are there sufficient operational records to demonstrate compliance?</p>

3	Was the agency transparent and were reports properly made?	
3.1	<p>Were all records kept in accordance with the TCPA? What are the agency’s record-keeping procedures and are they sufficient?</p>	Records check.
3.2	<p>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?</p>	Internal records (VI receives report).
3.3	<p>Did the Chief Commissioner notify the VI of the security clearance required?</p>	Internal records (VI receives notice)
3.4	<p>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?</p>	Qualitative assessment based on engagement and provision of records.