

Counter-Terrorism Powers Inspection Report

Report by Integrity Oversight Victoria on its inspection of
Victoria Police records under the Terrorism (Community
Protection) Act 2003 in October 2024

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Acknowledgement

Integrity Oversight Victoria acknowledges the Traditional Custodians of the lands on which we work and pays respect to Elders past, present and emerging. We recognise and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of Victoria.

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Introduction

This report presents the results of a six-monthly inspection conducted by Integrity Oversight Victoria of Victoria Police records under the *Terrorism (Community Protection) Act 2003* (the TCPA). It acquits our obligation under section 37D of the TCPA to determine the extent of compliance achieved by Victoria Police and its law enforcement officers with Parts 2, 2AA and 3A of the TCPA and report this to Parliament and the Minister (the Attorney-General).

Under the TCPA, we provide 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]
- 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.

At these inspections, we also assess 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 us.

This report provides our inspection findings for Victoria Police records during the May 2024 to October 2024 period (the reporting period). In addition to inspecting procedural updates and training records relevant to this period, we also inspected Victoria Police's use of special police powers under section 21B of Part 3A of the TCPA. While Victoria Police was given, by order, an authorisation to use special powers under this part of the TCPA, these powers were not required to be enlivened. We have not raised any compliance concerns from our inspection of operational records.

We engage 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 which support compliance with the requirements of the TCPA. In this report, we note the CTLU's cooperative and transparent engagement with us.

We have not made any recommendations from our October 2024 inspection.

Inspection of Victoria Police records

Integrity Oversight Victoria conducted its inspection on 15 October 2024 at the CTLU of Victoria Police. We inspected all available records connected with one application by Victoria Police to use Part 3A special police powers in September 2024. There were no other relevant actions by Victoria Police under the TCPA for us to assess.

Although Part 3A of the TCPA does not explicitly provide for certain records to be kept, the CTLU ensured the records made available for inspection enable us to ascertain the extent to which Victoria Police has complied with its use of these powers.

In addition to inspecting the operational records, we also received briefings from senior CTLU personnel and inspected procedural and training material.

Findings: authorisation and use of special powers

Was the application for the authorisation (including any extensions) properly made?

In certain circumstances, the Chief Commissioner of Police or a Deputy Commissioner may make an application in writing to the Supreme Court for an order authorising the exercise of special powers to protect persons attending events from a terrorist act; they may only do so with the written approval of the Premier.

We found the application for an order authorising special powers to protect persons attending an event from a terrorist act complied with the requirements of section 21B of the TCPA.

Specifically, we found the application met the following requirements:

- described the relevant event
- set out the facts and other grounds for reasonably suspecting the event might be the subject of a terrorist act
- explained why the authorisation was necessary to assist in protecting any person or persons attending the event
- specified the special powers under Division 3 of Part 3A of the TCPA thought to be reasonably necessary
- described the area to be targeted by the authorisation
- the application was sworn (or affirmed) and made to the Supreme Court.

Victoria Police did not make an application to extend the authorisation under section 21C of the TCPA.

Was the authorisation (including any interim order) in the proper form?

An authorisation given under section 21B of the TCPA must provide the following details:

- state that it was given under Part 3A of the TCPA
- describe the general nature of the relevant event
- describe the targeted area, as applicable

- specify the special powers that may be exercised
- specify the date and time the authorisation begins to have effect
- specify the date and time it ceases to have effect (not being later than 24 hours after the scheduled completion of the event).

The authorisation given to Victoria Police under section 21B of the TCPA specified all required information.

In some cases, the Supreme Court may make an interim order pending the hearing and final determination of the application for an order authorising the exercise of special powers. For the inspected application, no interim order was made.

Was the authorisation properly executed?

Since Victoria Police did not exercise the powers it was authorised to use under section 21B of the TCPA, we were not required to assess compliance with the exercise of special powers by police officers and protective services officers.

Findings: preparatory activities

During an inspection, we seek information from Victoria Police on its progress in:

- delivering training to its staff
- making improvements to procedures on the exercise of TCPA powers, including the development of templates
- engaging with stakeholders at relevant agencies.

Since Victoria Police does not regularly exercise powers under the TCPA that are relevant to our inspections, we consider these preparatory activities an important aspect of demonstrating Victoria Police has processes that enable it to comply with the TCPA. Furthermore, powers under the TCPA are highly intrusive and complex to administer.

We also consider Victoria Police's engagement with other bodies with a function under the TCPA to be important for ensuring different roles are clearly understood and notifications required under the TCPA can be properly made.

Have officers been trained in their obligations?

At the October 2024 inspection, we were provided with records and a briefing on training the CTLU had facilitated during the reporting period. This training was focused on utilising powers under Parts 2AA and 3A of the TCPA. The CTLU's training schedule for the remainder of 2024 included training to Victoria Police officers who may have a role to perform in connection with Parts 2 and 3A of the TCPA.

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

We inspected minor updates to procedures used by the CTLU to administer Part 3A of the TCPA. No changes to procedures relating to Parts 2 and 2AA of the TCPA were reported.

During the reporting period, the CTLU amended its template letter for requesting written approval from the Premier to apply for special powers under section 21B of the TCPA. Among the changes, the revised template now specifies the special powers which Victoria Police anticipates will be included in the application to the Supreme Court.

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

The CTLU has continued to engage with external bodies with an operational or accountability function under the TCPA by including them in training exercises. In the reporting period, the CTLU facilitated an annual scenario-based exercise on Part 2AA powers involving multiple external agencies with Preventative Police Detention roles and functions, including the Public Interest Monitor, the Independent Broad-based Anti-corruption Commission, and Integrity Oversight Victoria, among others.

The CTLU further supported external stakeholder engagement by working with the Department of the Premier and Cabinet on changes connected to the letter of approval from the Premier for making an application for use of Part 3A special police powers.

Findings: transparency and cooperation

Integrity Oversight Victoria considers an agency's transparency, its cooperation during inspection, and its responsiveness to suggestions and issues to be a measure of its compliance culture.

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?

There were no historical issues to be addressed on this occasion as no issues were identified during our inspection of Victoria Police records under the TCPA at the previous inspection conducted on 30 April 2024.