

Review of the *Terrorism (Community Protection) Act 2003*

Stage One Report

December 2020



Justice
and Community
Safety

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Executive summary

The *Terrorism (Community Protection) Act 2003* ('the Act') is part of a national legislative framework that enables states, territories and the Commonwealth to work together to disrupt terrorist activity, respond to acts of terror and keep the community safe.

It contains a range of significant powers to respond to terrorist threats and attacks. These extend to covert search warrants, preventative detention orders, powers around the questioning of terror suspects and a range of other complementary powers for Victoria Police. A number of independent agencies have oversight of these intrusive powers.

Since its enactment, the Act has been reviewed twice – a statutory review completed in 2014 and the 2017 Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers (the Harper–Lay review) that led to significant amendments in 2018.

The current threat environment

Australia's national terrorism threat level is currently assessed as 'probable'. This means security agencies believe that individuals or groups continue to have the intent and capability to conduct a terrorist attack in Australia.

A two-stage review

Under the Act, the responsible minister must ensure a review of its operation and table a report of the review in both Houses of Parliament by 31 December 2020.¹ The Act is then due to expire on 1 December 2021², unless the sunset provision is extended or repealed.

Due to the impact of the COVID-19 pandemic on the justice system, the Attorney-General of Victoria, as responsible minister, decided that the review be completed in two stages.

The **Stage One** review (this report) meets the statutory reporting timeline. In this review, led by the Department of Justice and Community Safety, agencies with statutory obligations or a significant role under the Act were invited to give feedback on the operation of the Act and suggest issues to be explored in Stage Two.

The **Stage Two** review will commence once the impacts of the COVID-19 pandemic have eased, enabling a comprehensive review process to occur. It will inform the Government's consideration of any necessary reforms to the Act and inform the future of the sunset provision. The review will seek the views of the community on the operation of the Act and explore issues raised by key stakeholders in Stage One. Victoria's *Charter of Human Rights and Responsibilities Act 2006* will provide critical context for this work.

Findings of the Stage One review

No urgent or pressing issues were identified that required immediate action. Matters raised by the agencies, to be explored in Stage Two, were mainly about clarifying or streamlining certain aspects of the Act. Other issues were about enabling greater collaboration between agencies.

Next steps

The Stage Two review is expected to start in early 2021 and conclude by mid-2021. It will seek the views of the Victorian community and address issues raised by stakeholders during Stage One and in future consultations.

¹ *Terrorism (Community Protection) Act 2003*, s.38

² *ibid.* s.41

1. Introduction

The Victorian *Terrorism (Community Protection) Act 2003* ('the Act') was introduced progressively from 16 April 2003 and was fully operational by 1 July 2004.

It was part of a nation-wide legislative response to the heightened threat of terrorist attacks in Australia, following the 9/11 attacks in the USA in 2001 and the Bali bombings of 2002.

The Act introduced new powers and obligations designed to prevent, and respond to, terrorist threats and attacks. These powers extended to covert search warrants, preventative detention orders, powers around the questioning of terror suspects and a range of other complementary powers for Victoria Police.

The laws were required to:

- address the threat of terrorism and keep the community safe, and
- be consistent with human rights and proportionate with community expectations, despite some powers being overtly intrusive.³

At the time, the Victorian Government acknowledged the strength of these powers, noting the laws "are also finely balanced to ensure that important civil liberties are not unduly infringed".⁴

In 2005, the Victorian Government committed to enacting and supporting counter-terrorism laws based on principles that the laws:

- were based on evidence of their necessity
- were effective against terrorism
- contained safeguards against abuse
- were subject to judicial review, and
- were subject to legislative sunset⁵ (would cease to operate by a certain date unless extended or amended by law).

2. About the review

2.1 Reason for the review

Section 38 of the Act requires the responsible minister, the Attorney-General of Victoria, to ensure a review of the Act and to table a report of its review by 31 December 2020.

Section 41 states that the Act will expire on 1 December 2021.

Together, these sections create an expectation that the statutory review will inform any decision to extend or repeal the Act.

³ See, for example, comments made by the Hon. Robert McLelland MP, 2nd Reading Speech, Independent National Security Legislation Monitor, Commonwealth of Australia, House of Representatives Hansard, 17 March 2010

⁴Hon Steve Bracks MP, *Terrorism (Community Protection) Bill 2003*, 2nd Reading Speech, 27 February 2003, p.164

⁵Hon Steve Bracks MP, *Protecting our community: attacking the causes of terrorism*, Parliament of Victoria, 21 September 2005

2.2 Impact of the COVID-19 pandemic

Due to the impact of the COVID-19 pandemic on the Victorian community throughout most of 2020, careful consideration was given to the best way to acquit the statutory review.

The nature of this legislation makes it important to facilitate broad participation in the review process. Broad participation is also important in ensuring the review is comprehensive, as it informs the Government's decision about the future of the Act.

The impact of the pandemic on the justice system, including courts, law enforcement, oversight and legal service agencies, cannot be under-estimated. All agencies with public-facing roles have understandably needed to focus on maintaining safe service delivery for the Victorian community. Many of these agencies are key stakeholders in the statutory review.

2.3 A two-stage review

Considering the above factors and unique circumstances of 2020, the Attorney-General determined that the review be completed in two stages.

The **Stage One** review (this report) fulfills the statutory requirement under section 38 of the Act. The review:

- provides a high-level overview of the national terrorism framework
- outlines the history and role of the Act
- identifies any issues in the Act requiring urgent or priority consideration
- outlines the broad directions of the Stage Two review.

The **Stage Two** review is expected to start in early 2021 when the pandemic's impacts on the justice system have eased. Informed by feedback received in Stage One, it will include a comprehensive consultation process with a broad range of stakeholders and the community. The review will also address the Act's sunseting on 1 December 2021.⁶ The Stage Two review is expected to be completed in mid-2021.

2.4 Recent reviews

The Act has been reviewed twice since its enactment – a statutory review in 2014 and the 2017 Harper–Lay Review.

The 2014 statutory review – the Victorian Review of Counter-Terrorism Legislation – was tabled in Parliament on 16 September 2014. It was conducted by His Honour David Jones AM, Lieutenant General (Ret'd) Mark Evans AO DSC, and Kieran Walshe APM.

Following a siege and hostage situation in Brighton, Melbourne, on 5 June 2017, the Premier of Victoria convened an Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers. It was led by Ken Lay AO APM and the Hon. David Harper AM QC, and known as the Harper–Lay Review. The panel extensively reviewed the Act and made 42 recommendations in two reports. All recommendations in Report 1 and some recommendations in Report 2 were implemented in 2018.

⁶ *Terrorism (Community Protection Act) 2003* s.41

3. Current threat environment

3.1 Overview

Australia's national terrorism threat level is currently assessed as 'probable'. This means security agencies have assessed credible evidence and believe individuals or groups have the intent and capability to conduct a terrorist attack in Australia.⁷

Radical Sunni Islamist ideology that inspires, directs or otherwise encourages terrorist actions is considered the primary terrorist threat in Australia. There is also a growing threat from right wing extremism, associated with ideologies centring on, but not limited to, white nationalism, anti-immigration and racism.⁸

As well as a changing ideological landscape, the types of terrorist attacks occurring in Australia and overseas are evolving. Traditional complex attacks organised by transnational militants remain a threat. However, the primary terrorist threat in Australia is from a small number of Islamist extremists, mainly lone-actor terrorists or small groups who can act independently and with a high degree of agility. Lone-actor terrorism is simple by nature and preparation for attacks may not involve activity that comes to the attention of authorities. This means there is no guarantee of early detection or disruption of lone-actor terrorism attacks.

The lone-actor threat is not confined to Islamist extremists. Individuals motivated by other ideological agendas could also consider conducting an act of terrorism. This threat was highlighted by the 2016 arrest and subsequent conviction, on terrorism-related charges, of a right-wing lone actor in Melbourne.⁹

Regardless of the number of individuals or groups involved, many terrorist attacks and plots aim to inflict maximum casualties or indiscriminately target members of the public. Attackers often aim to be killed during their attack.¹⁰

3.2 Terrorism events

Victoria has experienced several terrorism events since the Act came into operation. The table below outlines the number of terrorism-related charges and convictions secured in Victoria since 2003, against the number of attacks that have occurred in Australia during the same period.

Table 1: Terrorism charges, convictions and attacks since 2003¹¹

Number of terrorism charges laid in Victoria	Number of terrorism convictions in Victoria	Number of terrorism attacks in Australia
49	33	8

⁷Australian Government, Australian National Security, <<https://www.nationalsecurity.gov.au/Securityandyourcommunity/Pages/National-Terrorism-Threat-Advisory-System.aspx#current>> viewed 29 October 2020

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Email from Victoria Police to Department of Justice and Community Safety, 2 November 2020

4. Australia's counter-terrorism framework

4.1 Development of the framework

Australia's counter-terrorism framework was developed in the heightened threat environment that followed the attacks on the World Trade Centre and the Pentagon on 11 September 2001.

In April 2002, the Commonwealth, state and territory governments formed the National Counter-Terrorism Committee (NCTC). This national coordinating body was set up to manage the development of a comprehensive, cooperative and nationally-coherent counter-terrorism system.¹²

At the time, the NCTC agreed on six key elements to counter terrorism:

1. The Commonwealth to have responsibility for "national terrorist situations", including attacks on Commonwealth targets, multi-jurisdictional attacks, threats against civil aviation and those including chemical, biological, radiological and nuclear material.
2. The Commonwealth to consult and seek agreement from affected states and territories before a national terrorist situation was declared, and states and territories agreed not to unreasonably withhold such agreement.
3. To take whatever action was necessary to ensure that terrorists could be prosecuted under criminal law, including a referral of power of specific, jointly-agreed legislation.
4. All jurisdictions to review their legislation and counter-terrorism arrangements to make sure they were sufficiently strong.
5. The Commonwealth, states and territories to continue to improve Australia's counter-terrorist intelligence capacity and to develop effective means for sharing intelligence, and to respond rapidly and effectively to emerging threats.
6. The existing Standing Advisory Committee on Commonwealth and State Cooperation for Protection Against Violence to be reconstituted as the National Counter-Terrorism Committee, with a broader mandate to cover protection and consequence management issues with Ministerial oversight arrangements.¹³

It was uncertain whether the Commonwealth power under section 51(vi) of the Constitution, to legislate with regard to defence and military matters, extended to matters of domestic security. To address this uncertainty, the NCTC agreed that states would refer certain powers under section 51(xxxvii) of the Constitution to the Commonwealth. This would enable legislation to be passed that empowered national law enforcement and intelligence agencies to operate counter-terrorism programs.¹⁴

Through the referral of powers, the Commonwealth amended the *Crimes Act 1914 (Cth)*, the *Criminal Code Act 1995 (Cth)* and the *Australian Security and Intelligence Organisation Act 1979 (Cth)*, to provide powers for federal intelligence and law enforcement agencies to identify, disrupt and respond to terrorism events.

The states then enacted concurrent legislation to strengthen state responses to acts of terrorism. This resulted in a mixed system where Commonwealth federal police and intelligence agencies, and state police, work together to operate Australia's counter-terrorism system.

¹² Department of Justice and Community Safety, *Victorian Review of Counter-Terrorism Legislation*, September 2014

¹³ *Ibid*

¹⁴ *Terrorism (Commonwealth Powers) Act 2003*

4.2 The current framework

The national counter-terrorism framework has changed substantially since 2002. The legislative and operational framework has retained the features of the initial 2002 agreement, but there is stronger emphasis on collaboration between Commonwealth, state and territory governments.¹⁵

These arrangements enable specialist state and territory counter-terrorism teams to work cooperatively with the Australian Federal Police and the Australian Security Intelligence Organisation in joint counter-terrorism taskforces, which have primary responsibility for disrupting and responding to acts of terror.

5. The *Terrorism (Community Protection) Act 2003*

The Act was enacted in 2003 to complement existing Commonwealth legislation and support a national approach to respond to terrorism. The Act was first due to be reviewed by 30 June 2006 and to sunset on 1 December 2006.

Since first enacted, the Act has been amended to extend powers available to law enforcement, give statutory agencies greater oversight over the exercise of those powers, and extend the sunset date.

5.1 Development of the Act

Table 2: Major amendments and reviews of the Act and developments in counter-terrorism policy

Act / Review	Amendments
<i>Terrorism (Community Protection) Amendment Act 2006</i> Commenced 9 March 2006	Amended the Act as part of an overall strengthening of Australia's counter-terrorism legislation in response to significant terrorist attacks worldwide, including the London and Madrid train bombings.
	Provided for the use of preventative detention orders (PDOs) and stop, search and seize powers by Victoria Police.
	Extended the date for review of the Act by five years to 30 June 2011. Extended the sunset date by 10 years to 1 December 2016.
<i>Terrorism (Community Protection) Amendment Act 2011</i> Commenced 6 July 2011	Amended sections 38(1) and (2) of the Act, extending the date for completion of a statutory review. This enabled the review to be done at the same time as a planned Council of Australian Governments (COAG) review of counter-terrorism legislation. The review date was extended to 31 December 2013, and then to 31 December 2014.

¹⁵ See, for example, Part 4.3.3 of the *Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers: Report 1*

<p>Formation of the Australia-New Zealand Counter-Terrorism Committee In operation from September 2012</p>	<p>The Australian and New Zealand Governments agreed that New Zealand would become part of the Australia-New Zealand Counter-Terrorism Committee. Previously, New Zealand had observer status on the NCTC. The change was made to ensure the closest possible coordination on counter-terrorism operations.</p>
<p>Victorian Review of Counter-Terrorism Legislation (2014 statutory review) Tabled 16 September 2014</p>	<p>The statutory review satisfied section 38 of the Act, which required the Minister to ensure a review of the Act's operation and table a report of the review by 31 December 2014.</p> <p>The review was undertaken by His Honour David Jones AM, Lieutenant General (Ret'd) Mark Evans AO DSC, and Kieran Walshe APM.</p> <p>The report of the review made 13 recommendations, including providing for delayed notification of a covert search warrant, retention of PDOs and the Victorian Inspectorate to have oversight in two areas.</p>
<p><i>Terrorism (Community Protection) Amendment Act 2015</i> Fully commenced 16 October 2015</p>	<p>Implemented recommendations from the 2014 statutory review.</p> <p>Provided limited immunity from prosecution for Victoria Police officers when transferring a person who was subject to a PDO to a prison.</p> <p>Extended the sunset clause for the <i>Terrorism (Community Protection) Amendment Act 2006</i> from 1 December 2016 to 1 December 2021.</p> <p>Authorised Victoria Police to gain remote entry to premises for use of covert search warrants. Remote entry was defined as accessing electronic equipment, such as a computer or any other device, from a remote location.</p> <p>When applying for a PDO, authorised Victoria Police to use the name provided to establish a person's identity where their identity was not clear, or the person was known by multiple aliases.</p> <p>Enabled applications by a police officer to revoke or vary a PDO based on new facts or circumstances.</p> <p>Required a police officer, detaining a person under a PDO, to release the person or arrange for their release if they were satisfied that the order no longer had valid grounds.</p>
<p>Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers (Harper–Lay Review 2017)</p>	<p>In response to the 2017 Brighton siege and other terrorist activity in Australia, the Victorian Government convened the Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers, led by Ken Lay AO APM and the Hon. David Harper AM QC.</p>

<p>Published by the Department of Premier and Cabinet. Report 1 published 21 September 2017 Report 2 published 20 November 2017</p>	<p>The panel reviewed the effectiveness of the powers of the Act and Victoria’s broader response to violent extremism. The review made 42 recommendations in two reports. Report 1 dealt with the Act and police powers. Report 2 assessed how the Government coordinated efforts to counter and prevent violent extremism more broadly.</p>
<p>Justice Legislation Amendment (Terrorism) Act 2018 Commenced 1 October 2018</p>	<p>Implemented the legislative aspects of all recommendations from Report 1 of the Harper-Lay Review. Implemented recommendations 18 to 21, and recommendation 24, from Report 2. Implemented four outstanding recommendations from the 2014 Victorian Review of Counter-Terrorism Legislation. Amendments were made to the <i>Bail Act 1977</i>, <i>Corrections Act 1986</i>, <i>Children Youth and Families Act 2005</i>, <i>Crimes Act 1958</i>, <i>Criminal Procedure Act 2009</i> and the <i>Sentencing Act 1991</i>.</p>
	<p>Inserted into the Act Part 2AA – Preventative Police Detention. This allows police to take into custody and detain an adult for a period not exceeding four days, or a child aged 14 years or older for a period not exceeding 36 hours, in order to:</p> <ul style="list-style-type: none"> • prevent a terrorist act that is capable of being carried out, and could occur, within the next 14 days, or • preserve evidence of, or relating to, a recent terrorist act.
	<p>Amended the threshold test for preventative detention under Part 2A in relation to a terrorist act that has not yet occurred, from one that must be 'imminent' to one that is capable of being carried out, and could occur, within the next 14 days.</p>
	<p>Allowed questioning of a detained person under preventative police detention and under a court-ordered PDO, about the terrorist act that was the subject of the preventative police detention or PDO, or other specified terrorist acts.</p>
	<p>Extended the use of special police powers to Protective Services Officers in Part 3A. Created an express power for police to take control of an affected area, and make directions about how the area is used, in response to a terrorist threat or terrorist act.</p>
	<p>Created a single process for counter-terrorism intelligence to be protected in substantive applications under the Act within Part 5.</p>

5.2 Further amendments to the Act

Implementation of further recommendations from Report 2 of the Harper-Lay Review is ongoing.

5.3 Powers under the Act

The Act gives Victoria Police a range of powers to specifically deal with a terrorist threat or an occurring terrorist act. Applications for covert search warrants (Part 2) and PDOs (Part 2A) are heard and determined by the Supreme Court of Victoria.

Table 3: Key powers under the Act

Power	TCPA	Summary of power
Covert search warrants	Part 2	<p>The Supreme Court can issue a covert search warrant to Victoria Police if the court is satisfied that there are reasonable grounds for police suspicion or belief that:</p> <ul style="list-style-type: none"> a terrorist act has been, is being, or is likely to be committed, or a person who lives at or visits the premises has done an act to prepare for a terrorist act or is planning one. <p>The court must be satisfied that covert entry and search of the premises is necessary and would substantially help prevent or gain knowledge of the terrorist act.</p>
Preventative police detention	Part 2AA	<p>An authorised police officer may make a police detention decision if satisfied that there are reasonable grounds to suspect a person:</p> <ul style="list-style-type: none"> will engage in a terrorist act possesses a thing connected to preparing for a terrorist attack or engaging a person in a terrorist act, or has done an act to prepare for a terrorist act or is planning one <p>and in addition:</p> <ul style="list-style-type: none"> making the decision would substantially help prevent a terrorist attack occurring, and detaining the subject is reasonably necessary, or it is reasonably necessary to detain a person to preserve evidence of, or relating to, a terrorist act that has occurred within the past 28 days. <p>The terrorist act must be capable of being carried out and can occur within the next 14 days.</p> <p>A person detained under this Part may be questioned by Victoria Police in relation to certain terrorist acts.</p> <p>Victoria Police may also apply for a prohibited contact order as part of a PDO.</p> <p>An adult may be detained for a period not exceeding four days or a child aged 14 years or older for a period not exceeding 36 hours.</p>
Preventative detention orders (PDOs)	Part 2A	<p>The Supreme Court can make a PDO if satisfied that there are reasonable grounds to suspect a person:</p> <ul style="list-style-type: none"> will engage in a terrorist act

		<ul style="list-style-type: none"> possesses a thing connected to preparing for or engaging a person in a terrorist act, or has done an act to preparing for a terrorist attack or is planning one <p>and in addition:</p> <ul style="list-style-type: none"> making the decision would substantially help prevent a terrorist attack occurring, and detaining the subject is reasonably necessary, or it is reasonably necessary to detain a person to preserve evidence of, or relating to, a terrorist act that has occurred within the past 28 days. <p>A person detained under this Part may be questioned by Victoria Police in relation to certain terrorist acts.</p>
Power to detain and decontaminate	Part 3	To protect people from chemical, biological or radiological contamination where a terrorist attack may have occurred, Victoria Police may direct people away from any area and detain and direct a person to submit to a decontamination procedure.
Special police powers	Part 3A	<p>On application by the Chief Commissioner of Police, the Supreme Court may issue an order authorising special police powers where:</p> <ul style="list-style-type: none"> an event is or is likely to take place in Victoria, and prominent people or a large number of people are attending or likely to attend, and the Chief Commissioner of Police is satisfied, on reasonable grounds, the event might be the subject of a terrorist attack, and the area where the event is or is likely to take place, or any other area connected with the event, is necessary to help protect people attending the event from a terrorist act, and using the powers will substantially help prevent the terrorist act or reduce its impact. <p>An interim authorisation may be given by the Chief Commissioner of Police if satisfied, on reasonable grounds, that a terrorist act is occurring or is capable of occurring in the next 14 days and the Premier has given approval in writing.</p> <p>The Chief Commissioner of Police may give an interim authorisation without the written approval of the Premier or their delegate, if either are not reasonably able to be contacted at the time it is given.</p>

5.4 Oversight of powers in the Act

The Act gives certain agencies oversight functions in relation to the powers in the Act. This includes monitoring how the Act is used and investigating complaints about its use.

The following agencies have oversight powers:

- Public Interest Monitor
- Commission for Children and Young People
- Victorian Inspectorate
- Victorian Ombudsman
- Independent Broad-based Anti-corruption Commission.

Victoria Legal Aid does not have an oversight role but may be required to provide legal representation to adults and children detained under Parts 2AA and 2A of the Act, in certain circumstances.

Table 4: Roles under the Terrorism (Community Protection) Act 2003

Agency	TCPA	Oversight role
Public Interest Monitor	Part 1A – Public Interest Monitor	To represent the public interest in applications for: <ul style="list-style-type: none"> • PDOs • covert search warrants • prohibited contact orders • counter-terrorism intelligence protection orders.
Commission for Children and Young People	Part 1B – Role of the Commission for Children and Young People	Monitor the treatment and promotion of the interests of children detained under Part 2AA (preventative police detention) or under part 2A (PDOs).
Victorian Ombudsman	Parts 2A / 2AA – Preventative Detention Orders and Preventative Police Detention	To be notified about the issue of police detention decisions, preventative detention and prohibited contact orders.
		To be contacted by, and investigate complaints from, a detained person about the application for or their treatment under preventative police detention or a PDO.
Independent Broad-based Anti-corruption Commission	Parts 2A / 2AA – Preventative Detention Orders and Preventative Police Detention	To be notified about the issue of police detention decisions, preventative detention and prohibited contact orders.
		To be contacted by, and investigate complaints from, a detained person about the application for or their treatment under preventative police detention or a PDO.
Victorian Inspectorate	Part 6 – Role of Victorian Inspectorate	Half-yearly inspection of Victoria Police records to determine compliance with Part 2 (covert search

		warrants), Part 2AA (preventative police detention) and Part 3A (special police powers).
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6. Stakeholder feedback in Stage One

Stage One of the review involved stakeholders with statutory obligations or a significant interest in the Act. The Department of Justice and Community Safety invited these entities to outline any feedback or comments they may have about the operation of the Act, including any matters they suggested could be explored in Stage Two. The entities included:

- Supreme Court of Victoria
- Victoria Police
- Public Interest Monitor
- Victorian Inspectorate
- Independent Broad-based Anti-corruption Commission
- Victoria Legal Aid
- Commission for Children and Young People
- Victorian Ombudsman.

6.1 No urgent or pressing issues identified

No urgent or pressing issues were raised in the feedback that stakeholders provided in Stage One. Stakeholders suggested matters that could be explored further, such as those described below. These and other matters will be explored in Stage Two.

For example, Victoria Police suggested that the Stage Two review should clarify the scope and operation of special police powers (Part 3A), consider some operational aspects of preventative police detention and PDOs (Parts 2AA and 2A), further examine certain investigation powers and examine the scope of protection available for counter-terrorism intelligence. It also sought to explore the need for additional Victorian legislation to support any new Commonwealth terrorism offences.

The Independent Broad-based Anti-corruption Commission suggested that the review explore amending the Act to clarify some agency functions. The Victorian Ombudsman sought examination of the interaction between the Act and her agency's own enabling legislation. The Ombudsman also suggested exploring whether the Act could be amended to expand the agency's investigation powers. The Victorian Inspectorate proposed exploring amending the Act to enable greater collaboration between agencies and to streamline some aspects of the Act's operation.

The Public Interest Monitor suggested an investigation of the best ways for agencies, with roles and responsibilities under the Act, to maintain their readiness to use their powers under the Act, given that they are rarely used. Victoria Legal Aid and the Commission for Children and Young People highlighted what is required to ensure the Act operates as intended.

7. Next steps

The Stage Two review is expected to start in early 2021, when the impacts of the COVID-19 pandemic have eased and a comprehensive consultation process can occur. The Stage Two

review will seek the views of the Victorian community and explore issues raised by stakeholders to date and in future consultations.

The terms of reference for Stage Two are expected to reflect the principles outlined in the introduction of this report. The desirability of the involvement of an eminent independent adviser or advisers to give advice and guidance on areas of further inquiry will also be explored.

The Stage Two review will address the Act's sunsetting on 1 December 2021.

As noted in Report 1 of the Harper-Lay Review "many of the terrorism-related powers available to police are exceptional in nature and...while the threat from terrorism and violent extremism is significant, Australia remains a relatively safe and peaceful place. Accordingly, it is important that our response to this threat is not disproportionate, as there is a risk that action of this nature may divide our community and undermine fundamental rights and institutional safeguards."¹⁶

It is in this context that the Stage Two review will facilitate careful consideration of the Act and its operation. The Stage Two review will inform the Government's decisions about any future reforms that may be desirable or required to ensure Victoria continues to have the necessary tools to effectively prevent and combat terrorism.

¹⁶ *Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers: Report 1*, 12

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